TOWN OF FORT MYERS BEACH
CULTURAL RESOURCES DEPARTMENT

ADVERTISEMENT
REQUEST FOR PROPOSALS

Notice is hereby given that the Town of Fort Myers Beach, hereinafter known as the Town, is requesting proposals from qualified exhibit fabrication firms for **PROFESSIONAL SERVICES TO FABRICATE THE SHELL MOUND EXHIBIT** for the Mound House archaeological and historical site located at 289 Connecticut Street, Fort Myers Beach, FL.. Sealed proposals must be received in the office of the Town of Fort Myers Beach Town Hall, 2523 Estero Boulevard, Fort Myers Beach, Florida 33931 attention to Theresa Schober, Director of Cultural Resources no later than **4:00 p.m. on Thursday, September 10th, 2009**. The proposal shall be marked **"PROFESSIONAL SERVICES TO FABRICATE THE SHELL MOUND EXHIBIT".**

The RFP scope may be viewed or printed on line from www.fortmyersbeachfl.gov, then click on Requests for Bids & Proposals, RFP No. 09-06-CR. Consultants are solely responsible for checking this web site for the issuance of any addenda prior to submitting a proposal and/or providing the Town with a current email address for this purpose.

Construction Intent Specifications dated August 12, 2009 must be obtained from the Town of Fort Myers Beach at the Administrative Office of Mound House, 289 Connecticut Street, Fort Myers Beach, Florida 33931, (239) 765-0865 or may be viewed at the same locale on or after Tuesday, August 18, 2009.

The Town's selection committee meeting dates will be posted at Town Hall and/or listed on the Town website or contact the Town at (239) 765-0202 for such information.

TOWN OF FORT MYERS BEACH, FLORIDA
REQUEST FOR PROPOSALS NO. 09-06-CR

PROFESSIONAL SERVICES TO FABRICATE
THE SHELL MOUND EXHIBIT

Dated: August 18, 2009

The Town of Fort Myers Beach, hereinafter known as the Town, is requesting proposals from qualified exhibit fabrication firms for **PROFESSIONAL SERVICES TO FABRICATE THE SHELL MOUND EXHIBIT** for the Mound House archaeological and historical site located at 289 Connecticut Street, Fort Myers Beach, FL.

The Town of Fort Myers Beach owns and operates an archaeological and historical site at Mound House. This property is currently under development with a ca. 1921 restoration to the structure, grounds improvements, interpretive signage, and an archaeological exhibit within the mound. A grant from the Florida Department of State Division of Historical Resources has been awarded to the Town to complete the construction of an archaeological exhibit room excavated out of the shell mound in the area previously occupied by a large in-ground swimming pool. The services to be provided include exhibit fabrication and installation as detailed in the Construction Intent Specifications. The selected consultant will coordinate with Synergy Design Group and Whitehawk Productions for A/V components and production to ensure fabrication is true to all defined interpretive elements of the shell mound exhibit.

The summary of proposed terms is attached to this RFP No. 09-06-CR as Exhibit A.

Construction Intent Specifications dated August 12, 2009 must be obtained from the Town of Fort Myers Beach at the Administrative Office of Mound House, 289 Connecticut Street, Fort Myers Beach, Florida 33931, (239) 765-0865 or may be viewed at the same locale on or after Tuesday, August 18, 2009.

Interested exhibit fabrication firms who would like to be considered for the above contract must submit a cost proposal using the form provided. This shall be accompanied by supporting information detailing the consultant's experience and qualifications on similar projects and availability to provide and perform all of the professional services necessary to complete this project by the March 19, 2010 timeline. Time is of the essence due to grant funding restrictions. Supporting materials must also include a list of recent jobs performed and client references with contact information. Submit one (1) original proposal and four (4) identical copies of the accompanying information with an electronic copy of the same as a pdf on CD/DVD in a sealed envelope which is clearly and visibly marked on the outside, **"PROFESSIONAL SERVICES TO FABRICATE THE SHELL MOUND EXHIBIT".** All consultants and subconsultants must be qualified to do business in the State of Florida and must complete and include as a part of the RFP submittal, a Sworn Statement under Section 287.133 (3) (a), Florida Statutes, on Public Entity Crimes; the Special Conditions of Contract as Required by Historic Preservation Grant Award Agreement; an Affidavit Certification Immigration Laws; and the cost proposal form provided.

Sealed proposals must be received via U.S. mail or in person in the office of the Town of Fort Myers Beach Town Hall located on the second floor of 2523 Estero Boulevard, Fort Myers Beach, Florida 33931 attention to Theresa M. Schober, Director of Cultural Resources no later than **4:00 p.m. on Thursday, September 10th, 2009**, in order for the consultant to be considered. Proposals submitted after this time and date will not be considered and will be returned unopened to Consultant. Proposals received by telephone, telegraph, facsimile and/or e-mail will not be accepted. The Town will not be held responsible for proposals delayed by the U.S. Mail or any other courier. The Town shall not be held liable for any expenses incurred by the Consultant in

preparing and submitting the proposal and/or attendance at any interviews, contract negotiations or applicable site visits.

Any questions or communications concerning conditions and specifications shall be submitted in writing to the Town representative no later than seven calendar (7) days prior to the proposal due date and time by fax or e-mail. Communications shall be addressed to:

Theresa Schober, Director of Cultural Resource
Fax (239) 765-0841
E-mail theresa@fortmyersbeachfl.gov

All questions and responses will be released to all Consultants of record via email as an addendum that will become part of the contract documents. Under no circumstances will verbal responses be given to such inquiries, and Consultants are advised not to contact Ms. Schober other than in writing regarding this or any element of this RFP. Consultants are solely responsible for providing a current, functional email address to the Town for this purpose.

All information and materials submitted will become the property of the Town and shall be subject to the provisions of the public records laws in effect at this time. The Town reserve the right, in its sole judgment in the best interest of the Town of Fort Myers Beach, to waive any informalities in any bids, to make award(s) including multiple awards, to waive any nonsubstantive irregularity or technicality in bids received, in the Town's sole judgment, and /or to reject any or all bids.

The Town's selection committee meeting dates will be posted at Town Hall and/or listed on the Town website at www.fortmyersbeachfl.gov or contact the Town (239) 765-0202 for such information. This project has been financed, in part, with historic preservation grant assistance provided by the Bureau of Historic Preservation, Division of Historical Resources, Florida Department of State. As such, special conditions are required and incorporated herein.

Insurance Coverages Required: All Consultants shall maintain and if selected submit proof of insurance applicable for services described in these specifications. Certificates of insurance shall be written by a company or companies acceptable to the Town, licensed in the State of Florida, and shall be submitted to the Town no later than ten (10) days after award of the agreement. The award of a contract is conditioned upon such submittal to the Town's satisfaction. Certificates of insurance shall list the Town as the certificate holder and as an additional insured. Insurance shall be maintained during the entire term of the agreement, shall include Contractual Liability and Products and Completed Operations Coverage, and shall be of the following forms and limits:

Workers Compensation Coverage for all employees to comply with Statutory Limits in compliance with the applicable State and Federal laws;

Commercial General Liability Insurance with minimum limits of $1,000,000 each occurrence combined single limit or $1,000,000 each occurrence/$1,000,000 general aggregate;

Business Automobile Liability Insurance with minimum limits of $1,000,000 each occurrence Combined Single Limit or $1,000,000 each occurrence/$1,000,000 general aggregate.

Crime Coverage with minimum limits of $200,000

Renewal shall be sent to the Town at least 30 days prior to any expiration date. There shall be a 30 day notification to the Town in the event of cancellation, renewal, or modification of any required insurance coverage requirements that the Consultant is required to meet. The Consultant shall provide the Town with certificates of insurance meeting the required insurance provisions.

Estimated Project Schedule of Target Dates:

* Schedule does not account any add Alternates involving production of phenolics.

	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
Bid Release	8.14.09							
Vendor Questions	8.14.09 to 9.3.09							
Addenda Issued, if any	8.14.09 to 9.3.09							
Proposals Due		9.10.09						
Responses reviewed by committee		9.11.09						
Responses presented to Town Council		9.21.09						
Town Council awards bid/contracting		9.21.09 to 10.1.09						
Notice to Proceed			10.1.09					
Review and comments to SDG			10.8.09					
Preconstruction and VE drawing review			10.5.09					
Revisions to Design-intent construction drawings – 100%			10.30.09					
Client review (design intent drawings)				11.6.09				
Mural painting & final layouts of panels			10.9.09 to 12.3.09					
Client review					12.11.09			
Pre-press production of graphics					12.14.09 to 1.8.10			
Files to vendor for output						1.13.10		
Fabrication Supervision				11.13.09 to 2.15.10				
Crating, shipping to MH							2.26.10	
Installation Supervision					12.14.09 to 3.19.10			

Phase Legend:

1	Request for Proposals process
2	Fabrication
3	Installation

SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to _____
(print name of public entity)

by _____
(print individual's name and title)

for _____
(print name of entity submitting sworn statement)

whose business address is _____

_____

and (if applicable) its Federal Employer Identification Number (FEIN) is _____
(If the entity has no FEIN, include the Social Security Number of individual signing this sworn statement:__ _____.)

2. I understand that a "public entity crime" as defined in Paragraph 287.233(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.233 (1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:

   1. A predecessor or successor of a person convicted of a public entity crime; or
   2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate

5. I understand that a "person" as defined in Paragraph 287.133 (1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

_____Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES **FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.**

_____
(Signature)

Sworn to and subscribed before me this _____ day of _____, 20_.

Personally know _____ _____

OR Produced Identification _____ Notary Public – State of _____

_____ My Commission expires _____
(Type of Identification)

_____
(Printed typed or stamped
commissioned name of notary public)

(Rev. 3/20/07)

SPECIAL CONDITIONS OF AGREEMENT BETWEEN OWNER AND CONTRACTOR/CONSTRUCTION MANAGER REQUIRED BY HISTORIC PRESERVATION GRANT AWARD AGREEMENT

PROJECT: SHELL MOUND EXHIBIT, PHASE II
HISTORICAL RESOURCES GRANT-IN-AID NO. SC811

Agreement Amended: _____ (Agreement)

Date of Agreement: _____

Parties:

1. _____ (Owner)

2. _____ (Contractor/Construction Manager)

These Special Conditions shall supplement and become part of the Agreement and shall superseded any conflicting provisions of said Agreement.

Equal Employment Opportunity Compliance

1.1 The Contractor/Construction Manager shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title I of the Americans with Disabilities Act of 1990 in that: No person in the United States shall on the grounds of race, creed, color, national origin, sex, age, political affiliation, beliefs, or disability be subject to discrimination under any program or activity which the Contractor/Construction Manager has agreed to undertake by and through the covenants and provisions set forth in this Agreement.

Access to Records

2.1 The Contractor/Construction Manager shall keep and maintain financial, invoice, and employment records pertaining to the contractual obligation between the Parties for pre-audit and post-audit purposes for a period of five years following the completion of all project work, or until all claims and audit findings involving these records have been received, whichever is later. The Owner, the Florida Department of State, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor/Construction Manager which are directly pertinent to this Agreement, for the purpose of making audit, examination, excerpts, and transcription.

Town of Fort Myers Beach	_____
Owner	Contractor/Construction Manager
2523 Estero Boulevard	_____
Address	Address
Fort Myers Beach, Florida 33931	_____
By _____	By _____
Larry Kiker, Mayor	
Date _____	Date _____

AFFIDAVIT CERTIFICATION
IMMIGRATION LAWS

BID NO.: **09-06-CR**
PROJECT NAME: **PROFESSIONAL SERVICES TO FABRICATE THE SHELL MOUND EXHIBIT**

TOWN OF FORT MYERS BEACH WILL NOT INTENTIONALLY AWARD TOWN CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

TOWN OF FORT MYERS BEACH SHALL CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY LEE COUNTY.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name:_____ _____

_____ _____
Signature Title Date

STATE OF _____
COUNTY OF _____

The foregoing instrument was signed and acknowledged before me this _____day of _____,

20___, by _____ who has produced

(Print or Type Name)
_____ as identification.
(Type of Identification and Number)

_____
Notary Public Signature

_____
Printed Name of Notary Public

_____
Notary Commission Number/Expiration

The signee of this Affidavit guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. *TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.*

FMB:100

Shell Mound Exhibit Fabrication Proposal Form

The undersigned, as qualified consultant, does hereby declare that it has read the Request for Proposals, Construction Intent Specifications, Insurance Requirements, Special Conditions of Contract, Proposal Form, and any other documentation for the **SHELL MOUND EXHIBIT**

With full knowledge and understanding of the requirements contained therein, Exhibit Fabrication Consultant does hereby agree to furnish all services, material and equipment for this project at the unit prices shown on the following pages. **The cost proposal shall be good for a period of 60 days after the bid is opened.** The above specified documents are hereby incorporated into the Proposal Form.

Faux painting of curved façade [exterior]	$ _____
Glass channel, base, base perimeter lighting, partition glass in two sizes with supports and elliptical rail cap	$ _____
Partition graphic reading rails [3] without laser light option	$ _____
Calusa historical mural digitally printed and mounted on buildout with lighting synced to A/V presentation	$ _____
Graphic 42” high end wall with door panel for staff access	$ _____
Black suspended ceiling system and panels	$ _____
Fiber optic lighting for archaeological features	$ _____
LED rope lighting for lighting of stratigraphy features	$ _____
Faux painting of two columns and concrete header [interior]	$ _____
Brass disk markers to indicate archaeological features	$ _____
Installation of all exhibit components and synchronization with A/V components by WhiteHawk	$ _____
Equipment Rental Allowance	$ _____
Project Management	$ _____
General & Administration	$ _____
Travel & Expenses Allowance	$ _____
Crating, Shipping, & Installation	$ _____
BASE PROJECT COST:	**$**_____ **(numeric)**

_____
(Type/Print Dollar Amount)

Alternate 1:
Entry doors cast resin applied face, painting & handles $ _____

Alternate 2:
Partition graphic reading rails [3] with laser light option $ _____

Alternate 3:
Retractable [motorized] curtain – digitally printed $ _____

Alternate 4:
Entry [Intro] graphic panels [5] & post support system $ _____

NAME OF CONSULTANT _____
(Signature of Authorized Representative)

EXHIBIT A
TOWN OF FORT MYERS BEACH PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT is made and entered into this _____ **day of** _____ **2009**, by and between the Town of Fort Myers Beach, Florida, a chartered municipality of the State of Florida, whose address is 2523 Estero Boulevard, Fort Myers Beach, Florida 33931 ("Town"), and _____ ("Consultant"), whose address is _____ _____.

WHEREAS, the Town desires the Consultant to provide and perform professional services as further described hereinafter concerning the following Project: **Project Name**, ("Project"); and

WHEREAS, the selection and engagement of the Consultant has been made by the Town in accordance with the provisions of the Consultants' Competitive Negotiation Act, Chapter 287.055, Florida Statutes and applicable Town Ordinances, Rules, and Charter Provisions;

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

ARTICLE 1.00 - SCOPE OF PROFESSIONAL SERVICES

1.01 SCOPE OF SERVICES. Consultant hereby agrees to provide and perform the professional services required and necessary to complete the work set forth on EXHIBIT "A", entitled "Scope of Professional Services", which is attached hereto and hereby incorporated by reference. Such services shall be referred to hereunder as Basic Services.

1.02 ADDITIONAL SERVICES. Should the Town request the Consultant to provide and perform professional services for this Project which are not set forth in EXHIBIT "A", the Consultant agrees to provide and perform such Additional Services as may be agreed to in a Supplemental Task Authorization to this Agreement.

1.03 SUPPLEMENTAL TASK AUTHORIZATION. All authorized changes to the scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion; and/or the guidelines, criteria and requirements pertaining thereto, shall be (i) reduced to writing on the Town's standard form Supplemental Task Authorization and (ii) signed by both parties, to be effective. Notwithstanding anything to the contrary herein, the Town shall have the unilateral right to delete all, or portions, of the Scope of Services, set forth on EXHIBIT "A" and/or any Supplemental Task Authorization executed hereunder, by the unilateral issuance of a written Supplemental Task Authorization to the Consultant, which shall be effective with or without Consultant's execution thereof.

ARTICLE 2.00 - OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant shall include, but not be limited to, the following:

2.01. LICENSES: Consultant certifies that it possesses valid, current licenses to do business, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement. Consultant agrees to maintain such licenses throughout the period that this Agreement is in effect.

2.02 QUALIFIED, WILLING AND ABLE. Consultant certifies it is qualified, willing and able to provide and perform all services hereunder, in accordance with the requirements hereof.

2.03 PERSONNEL

(1) QUALIFIED PERSONNEL: The Consultant shall employ and/or retain only qualified personnel for all services it provides hereunder. Such personnel shall have all license(s), certificate(s) of authorization and other legal qualifications to provide such services.

(2) CONSULTANT'S PROJECT DIRECTOR: The Consultant agrees to employ and designate, in writing, a qualified and properly licensed professional as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement and all addenda hereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising hereunder unless the parties have previously agreed otherwise in writing. The Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance by the Town.

(3) REMOVAL OF PERSONNEL: Within ten (10) days of receipt of the Town's written request, the Consultant shall remove and replace its Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to this Agreement, and any Addenda hereto. The Town shall have the ability to make such request with or without cause.

(4) SUB-CONSULTANT: The Consultant shall have the ability to engage the professional services of a Sub-consultant or Sub-consultants to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Sub-consultant. Such engagement shall be with the prior written approval of Town, and is subject to the terms of ARTICLE 8 below.

(5) SUB-CONTRACTOR: The Consultant shall have the ability to engage the services of a Sub-contractor or Sub-contractors to assist the Consultant in providing and performing services, work and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Subcontractor. Such engagement shall be with the prior written approval of Town, and is subject to the terms of ARTICLE 8 below.

2. 04 TIMELY ACCOMPLISHMENT OF SERVICES: The timely performance and completion of the required services, work and materials is vitally important to the interests of the Town and time is of the essence for all of the duties and obligations contained in this Agreement. The Town may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all services will be provided, performed and completed in a timely and diligent manner throughout.

2.05 STANDARDS OF PROFESSIONAL SERVICE: The work and/or services to be provided and/or performed by the Consultant (and by any Sub-consultant(s) and/or Sub-contractor(s) engaged by the Consultant) as set forth in the Scope of Professional Services, EXHIBIT "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those

governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the Town approves this Agreement, or which may subsequently be changed or revised.

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

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

(2) TOWN'S APPROVAL NOT RELIEVING CONSULTANT OF RESPONSIBILITY: Neither review, approval, nor acceptance by the Town of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and/o incidental professional services, work and materials furnished hereunder by the Consultant or any Sub-consultant(s) or Subcontractor(s) engaged by the Consultant, shall in any way relieve Consultant of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all Sub-consultants and/or Subcontractors engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the Town's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the Town's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

2.07 LIABILITY/HOLD HARMLESS. The Consultant shall be liable and agrees to be liable for and shall indemnify and hold the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including but not limited to court costs and attorney's fees (including but not limited to appellate attorney fees) arising out of, or resulting from, the Consultant's errors, omissions, and/or negligence, and/or willful and/or deliberate acts or failure to act, or those of any and all Sub-consultants and/or Subcontractors engaged by the Consultant during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and any and all Supplemental Task Authorizations hereto. The Consultant shall not be liable to nor indemnify the Town for any portions of damages arising out of any error, omission, and/or negligence of the Town, its employees, agents, or representatives or third parties. The Consultant hereby acknowledges that the compensation to be paid it by the Town hereunder includes compensation as consideration for the indemnification provided herein.

2.08 NOT TO DIVULGE CERTAIN INFORMATION: Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without Town's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub-consultant(s) or subcontractor(s) hereunder, subject to the requirements of the Florida

Public Records Law. Consultant shall require all of its employees, Sub-consultant(s) and Subcontractor(s) to comply with these provisions.

2.09 CONSULTANT TO REPAIR PROPERTY DAMAGE IT HAS CAUSED: Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense and in a manner acceptable to and approved by the Town, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its Sub-consultants and/or Subcontractors. The Consultant's obligation hereunder does not apply to property damage caused by any other Consultant or Contractor engaged directly by the Town. Should the Consultant fail to make such repairs and/or replacements within a reasonable time, the Town reserves the right to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the Town for all such costs and expenses.

2.10 PERMITS: The Consultant shall be responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the Project. Any fees required for such reviews, approvals or permits will be paid via check issued by the Town and made payable to the respective governmental body, upon the Consultant furnishing the Town satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The Town shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the Town so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

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

2.12 COMPLETION OF TASKS: Unless otherwise set forth herein, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in EXHIBIT "A" entitled "Scope of Professional Services" and Supplemental Task Authorizations, if any, hereto. The compensation to be paid the Consultant as set forth in EXHIBIT "B" entitled "Compensation and Method of Payment" and Supplemental Task Authorizations authorized hereunder shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in EXHIBIT "A" and Supplemental Task Authorizations, if any, thereto.

2.13 DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT: The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder to the Town shall be in addition to, and not a limitation of, any which are otherwise imposed or available by law, regulation, ordinance or statute.

2.14 REPRESENTATION OF THE TOWN BY CONSULTANT: If the Consultant's services or work involves construction contract administrative support services, the Consultant is not authorized to act on the Town's behalf, and shall not act on the Town's behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid to the construction contractor, or (2) the time for completing the work as required and agreed to in the construction contract, or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or any Supplemental Task Authorization(s) thereto. The Town will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

3.01 TOWN PROJECT MANAGER: The Town shall promptly provide written notice to the Consultant as to the Town's PROJECT MANAGER, who, on behalf of the Town, shall provide information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and any addenda hereto. The PROJECT MANAGER is not authorized to, and shall not, issue any verbal, or written, request or instruction to the Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of Services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; and (3) the amount of compensation the Town is obligated or committed to pay the Consultant.

3.02 AVAILABILITY OF TOWN INFORMATION

(1) PROJECT GUIDELINES AND CRITERIA

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

(2) TOWN TO PROVIDE PERTINENT REFERENCE MATERIAL

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

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

4.01 BASIC SERVICES: The Town shall pay the Consultant for all requested and authorized Basic Services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms hereof and accepted by the Town. Such payment shall be as set forth in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which is attached hereto and hereby incorporated by reference.

4.02 ADDITIONAL SERVICES: The Town shall pay the Consultant for all such Additional Services as have been requested and authorized by the Town and agreed to, in writing, by both parties hereto, which have been rendered as Additional Services by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the Town. Such payment shall be made as set forth under "ADDITIONAL SERVICES" in EXHIBIT "B".

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

(1) LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee(("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub-consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any addenda hereto.

(2) NOT-TO-EXCEED FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a NOT-TO-EXCEED ("N.T.E.") amount basis, it is shall mean:

- For the actual hours necessary, required and expended by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Attachment No. 1 to EXHIBIT "B" to this Agreement; and
- For actual necessary, required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable "Basis of Charges" for each item as set forth in Attachment No. 2 to EXHIBIT "B" to this Agreement and any Supplemental Task Authorizations and
- For actual, necessary and required hours, and non-personnel expenses and costs, expended by Sub-consultants and Subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the Town and the Consultant and as are set forth as a part of this Agreement and any Supplemental Task Authorizations thereto; and
- Any payment hereunder is subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the Town covering all such costs and expenses; and
- The Consultant's invoices and all payments to be made for all N.T.E. amounts shall be subject to the review, acceptance and approval of the Town; and
- When the Consultant's compensation is established on a N.T.E. basis for a specific Task(s) , the total amount of compensation to be paid to the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and Sub-consultant and Subcontractor costs for any such specific Task(s) shall not exceed the amount of the total N.T.E. compensation established and agreed to for each specific Task(s).
- If the amount of compensation for any Task(s) which the Consultant is entitled on the N.T.E. basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the N.T.E. amount established for the specific Task, any unexpended amount under a specific Task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other Task(s).

4.04 METHOD OF PAYMENT

(1) MONTHLY STATEMENTS: The Consultant shall submit not more than one invoice statement to the Town each calendar month, covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement, or Supplemental Task Authorization(s) hereunder. The Consultant's invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and where appropriate, supportive documentation of charges

consistent with the basis of compensation set forth in the Agreement, or in Supplemental Task Authorization(s) hereunder.

(2) PAYMENT FOR SERVICES PERFORMED: The Town shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:

(A) The Town shall pay the Consultant on the basis of services completed, for tasks set forth in EXHIBITS "A" and "B", as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the Town. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

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

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

4.05 PAYMENT IF SERVICES ARE TERMINATED AT CONVENIENCE OF THE TOWN:
If this Agreement is terminated at the convenience of the Town and not at the fault of the Consultant, the Town shall compensate the Consultant only for: (1) all services performed prior to the effective date of termination; (2) reimbursable expenses then due; and (3) reasonable expenses incurred by the Consultant in effecting the termination of services and work, and incurred by the submittal to the Town of project drawings, plans, data, and other project documents.

4.06 PAYMENT WHEN SERVICES ARE SUSPENDED: If the Town suspends the Consultant's services and work on all or part of the services required to be provided and performed by the Consultant pursuant to this Agreement, the Town shall compensate the Consultant only for the services performed prior to the effective date of suspension, reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

4.07 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE:
If the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased by the Town and/or are modified by the subsequent issuance of Supplemental Task Authorization(s), other than receiving the compensation set forth in Sub-Articles 4.05 and 4.06, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, mobilization costs, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 5.00 - TIME AND SCHEDULE OF PERFORMANCE

5.01 NOTICE TO PROCEED: Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the Town shall issue the Consultant a written Notice to Proceed. Following the issuance of such Notice to Proceed, the Consultant shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

5.02 TIME OF PERFORMANCE: The Consultant agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in EXHIBIT "C", entitled "Schedule of Performance", which EXHIBIT "C" is attached hereto and hereby incorporated by reference.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its Sub-consultant(s) and/or Subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the Town, in writing, within two (2) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the Town shall grant the extension if the Town determines the delay(s) encountered by the Consultant, or its Sub-consultant(s) and/or Subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect, in the Town's sole judgment.

5.03 CONSULTANT WORK SCHEDULE: The Consultant shall be required as a condition of this Agreement to prepare and submit to the Town, on a monthly basis, commencing with the issuance of the NOTICE TO PROCEED, a Consultant's Work Schedule. The Work Schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in EXHIBIT "C", pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's Work Schedule of planned and actual work progress shall be updated and submitted by the Consultant to the Town on a monthly basis.

5.04 FAILURE TO PERFORM IN A TIMELY MANNER: Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required hereunder in a timely and

diligent manner, the Town may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the Town at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any Supplemental Task Authorization(s) hereto. The termination rights specified in this sub-paragraph are in addition to any termination rights set forth elsewhere herein.

ARTICLE 6.00 - SECURING AGREEMENT: The Consultant warrants that the Consultant has not employed or retained any company or person other than a bona fide, regular, full time employee working for the Consultant to solicit or secure this Agreement and that the Consul-ant has not paid or agreed to pay any person, company, corporation individual, or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 7.00 - CONFLICT OF INTEREST: The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

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

If the Town determines that there is not such conflict of interest, then the Town shall give its written consent to such representation. If the Consultant or Sub-consultant accepts such a representation without obtaining the Town's prior written consent, and if the Town subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such Sub-consultant under this Agreement, then the Consultant or such Sub-consultant agrees to promptly terminate such representation. Consultant shall require each of such Sub-consultants to comply with the provisions of this Section. Should the Consultant fail to advise or notify the Town as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the Town may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 8.00 - ASSIGNMENT, TRANSFER AND SUBCONTRACTS: The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor consultant, or consulting organization. The Consultant shall not subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement, without prior written approval of the Town. The Consultant shall have the right, subject to the Town's prior written approval, to employ other persons and/or firms to serve as Sub-consultants and/or Subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The Town shall have the right and be entitled to withhold such approval.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the Sub-consultant(s) and/or Subcontractor(s) set forth in EXHIBIT "D", entitled "CONSULTANT'S ASSOCIATED SUB-CONSULTANTS AND SUBCONTRACTORS."

ARTICLE 9.00 - APPLICABLE LAW: Unless otherwise specified, this Agreement shall be governed by the applicable ordinances, laws, rules, and regulations of the Town of Fort Myers Beach, Lee County, Florida, and the State of Florida. It shall be governed by the laws, rules, and regulations of the United States when the Consultant is providing services funded by the United States government.

ARTICLE 10.00 - COVENANTS AGAINST DISCRIMINATION: The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to Town hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with state laws in the hiring of sub-consultants.

ARTICLE 11.00 - WAIVER OF BREACH: Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00 - OWNERSHIP OF DOCUMENTS

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

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

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

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

ARTICLE 14.00 - MAINTENANCE OF RECORDS

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

The Town and its authorized agents shall have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during this Agreement, and during the period of five (5) years thereafter. Such activity shall be conducted only during normal business hours and at the expense of the Town. To the extent permitted by law, the Town shall retain all such records as confidential.

ARTICLE 15.00 – TERMINATION: This Agreement may be terminated by the Town without cause and/or at its convenience, or due to the fault of the Consultant, by the Town giving thirty (30) days' written notice to the Consultant. If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the Town's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the Town may, without prejudice to any other right or remedy, and after giving the Consultant a thirty (30) calendar day written notice, terminate this Agreement.

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

The Consultant may request that this Agreement be terminated by submitting a written notice to the Town dated not less than sixty (60) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the Town reserves the right to accept or not accept the termination request submitted by the Consultant, and no such termination request submitted by the Consultant shall become effective unless and until Consultant is notified, in writing, by the Town of its acceptance.

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

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

Modifications and amendments to the covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Supplemental Task Authorization(s), executed by both parties. In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Supplemental Task Authorization(s), the latest executed Supplemental Task Authorization(s) shall take precedence.

In the event the Town issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it

is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the Town's internal control purposes only, and any terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

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

ARTICLE 17.00 - HEADINGS

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

ARTICLE 18.00 - ENTIRE AGREEMENT

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

The following listed documents, which are referred to hereinbefore, are attached to and are acknowledged, understood and agreed to be an integral part of this Agreement:

(1) EXHIBIT "A" entitled "Scope of Professional Services", dated _____, 2009.

(2) EXHIBIT "B" entitled "Compensation and Method of Payment" _____, 2009.

(3) EXHIBIT "C" entitled "Time and Schedule of Performance", dated _____, 2009.

(4) EXHIBIT "D" entitled "Consultant's Associated Sub-Consultant(s) and Subcontractor(s)", dated _____, 2009.

(5) EXHIBIT "E" entitled "Project Guidelines and Criteria", dated _____, 2009.

(6) EXHIBIT "F" entitled "Truth in Negotiation Certificate", dated _____, 2009.

(7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)

(8) EXHIBIT "H" entitled "Amendment to Articles", dated _____, 2009.

ARTICLE 19.00 - NOTICES AND ADDRESS OF RECORD

19.01 NOTICES BY CONSULTANT TO TOWN

All notices hereunder from the Consultant to the Town shall be in writing and shall be given by US first class mail service, postage prepaid, addressed to: Town OF FORT MYERS BEACH, 2523 Estero Boulevard, Fort Myers Beach, Florida 33931.

19.02 NOTICES BY TOWN TO CONSULTANT

All notices hereunder from the Town to the Consultant shall be in writing and shall be given by US first class mail service, postage prepaid, addressed to: _____

_____

Telephone Number: _____
Fax Number: _____

ATTENTION: _____

19.03 CHANGE OF ADDRESS OF RECORD

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

ARTICLE 20.00 - ACCEPTANCE. Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

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

TOWN OF FORT MYERS BEACH, FLORIDA

BY:_____ _____
Larry Kiker, Mayor DATE

ATTEST:

BY:_____ _____
Michelle Mayher, Town Clerk DATE

APPROVED AS TO FORM:

BY:_____ _____
Anne Dalton, Town Attorney DATE

CONSULTANT:

BY:_____ _____
DATE

EXHIBIT A

Date: _____, 2009

SCOPE OF PROFESSIONAL SERVICES FOR THE PROJECT KNOWN AS:

[PROJECT NAME]

BASIC SERVICES

Section 1. GENERAL SCOPE STATEMENT

The Consultant shall provide and perform the following professional services, which shall constitute the GENERAL SCOPE of the BASIC SERVICES under the covenants, terms, and provisions of this PROFESSIONAL SERVICES AGREEMENT:

(Brief description or listing of the full range of services or tasks that may be required to complete this Project, all of which may not necessarily be authorized at the time this original Agreement is executed.)

Section 2. TASKS

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

(Each task or sub-task should be given a title and a numerical identification number, and shall be described in detail sufficient to establish a clear and complete understanding between both parties to the Agreement as to what services or work the Town expects the Consultant to provide or perform, and shall be the basis of establishing the amount of compensation to be paid the Consultant.)

EXHIBIT B

Date: _____, 2009

COMPENSATION AND METHOD OF PAYMENT FOR THE PROJECT KNOWN AS:

[PROJECT NAME]

Section 1. BASIC SERVICES/TASK(S)

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

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the Consultant should be established and set forth below for each task or sub-task described and authorized in EXHIBIT "A". In accordance with Article 4 of the Agreement "Method of Payment", Tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation (LS or NTE)	If Applicable Indicate W.I.P.P.
TOTAL				

Section 2. ADDITIONAL SERVICES

The Town shall compensate the Consultant for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts, or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the Consultant for ADDITIONAL SERVICES requested and authorized in writing by the Town shall be as set forth in Article 4 of this Agreement.

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

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the Consultant's compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the Consultant shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated _____, 2008, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: _____, 2009

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE ***

FOR THE PROJECT ENTITLED:

[PROJECT NAME]

Consultant OR Sub-consultant NAME: _____

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

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

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

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

ATTACHMENT NO. 2 TO EXHIBIT B

Date: _____, 2009

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR THE PROJECT ENTITLED:

[PROJECT NAME]

CONSULTANT OR SUB-CONSULTANT NAME:

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	
Postage and Shipping	
Commercial Air Travel	
Vehicle Travel Allowance (or)	
Vehicle Rental/Gas	
Lodging (Per Person)	
Meals: (Breakfast)	
(Lunch)	
(Dinner)	
Reproduction (Photocopy) 8 ½" x 11"	
8 ½" x 14"	
11" x 14"	
Reproduction (Blue/White Prints)	
Printing/Binding	
Mylar Sheets	
Photographic Supplies & Services	
Tolls	
*List other specific project related reimbursables (i.e. film/developing):	
Permitting fees	
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

NOTE: N.T.E. indicates Not-To-Exceed

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EXHIBIT C

Date: _____, 2009

TIME AND SCHEDULE OF PERFORMANCE FOR THE PROJECT ENTITLED:

[PROJECT NAME]

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

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion of Each Phase And/or Task	Cumulative Number of Calendar Days for Completion from Date of Notice to Proceed

EXHIBIT D

Date: _____, 2009

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

FOR THE PROJECT ENTITLED:

[PROJECT NAME]

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

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Disadvantaged, Minority or Women Business Enterprise. If Yes, Indicate Type	Sub-consultant Services Exempted from Prime Consultant's Insurance Coverage

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EXHIBIT E

Date: _____, 2009

PROJECT GUIDELINES AND CRITERIA FOR THE PROJECT ENTITLED:

[PROJECT NAME]

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

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

Item No. 1

Item No. 2

Item No. 3

EXHIBIT F

Date: _____, 2009

TRUTH IN NEGOTIATION CERTIFICATE

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

[PROJECT NAME]

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

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in the above Agreement.

2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth here-in-above.

3. The truth of statements made herein may be relied upon by the Town and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

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

_____

BY: _____

TITLE: _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____, 2008, by _____ who has produced _____ as identification.

_____
Notary Public Signature

_____
Printed Name of Notary Public

Notary Commission Number/Expiration Date

EXHIBIT G

INSURANCE

Section One. Insurance Coverages To Be Obtained

(1) The Consultant shall obtain and maintain such insurance as will protect it from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of its employees including claims insured by general personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; and (4) from claims for injury to or destruction of tangible property, including loss of use resulting therefrom; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Agreement, whether such services, work and operations are performed by the Consultant, its employees, or by any Sub-consultant(s), Subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

(2) The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.

(3) The Consultant, throughout the time this Agreement is in effect, shall require and ensure that any and all of its Sub-consultants and/or Sub-Contractors obtain, have, and maintain the insurance coverages required by law to be provided.

(4) The Consultant shall obtain, have and maintain during the entire period of this Agreement all such insurance policies as are set forth and required herein.

(5) In the event that the Consultant engages Sub-consultants or Sub-Contractors to assist the Consultant in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverages required under this Article to be provided by the Consultant shall cover all of the services or work to be provided or performed by all of the Sub-consultants or Subcontractors engaged by the Consultant. However, in the event the services or work of Sub-consultants or Sub-Contractors engaged by the Consultant is not covered by the Consultant's insurance policy or policies, it shall be the responsibility of the Consultant to ensure that all Sub-consultants or Sub-Contractors have fully complied with the Town insurance requirements for: (1) Worker's Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Professional Liability as required and set forth in this Exhibit.

The services or work to be provided or performed by the following Sub-consultant(s) or Sub-Contractor(s) identified in elsewhere in this agreement are exempted and excluded from the Professional Liability insurance coverage requirements set forth in this Agreement:

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm

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

Section Two. Consultant Required to File Insurance Certificate(s)

(1) The Consultant shall submit to the Town's FINANCE DEPARTMENT all insurance certificates which are required under this Agreement for review and approval with respect to compliance with the insurance requirements. After approval by the FINANCE DIRECTOR, the Town will execute this Agreement and issue a written Notice to Proceed. The Consultant may then commence with any service or work pursuant to the requirements of this Agreement. All such Insurance Certificates shall be attached to this Agreement at the end of this EXHIBIT “G” and are hereby incorporated by reference thereto.

(2) All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the Town and licensed in the State of Florida.

(3) Each Certificate of Insurance submitted to the Town shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.

(4) Each Certificate of Insurance shall be addressed to the Town OF FORT MYERS BEACH, ATTN: Town MANAGER, at the address listed at the beginning of this Agreement.

(5) Each Certificate of Insurance shall specifically include all of the following:

(A) The name and type of policy and coverages provided; and

(B) The amount or limit applicable to each coverage provided and the deductible amount, if any, applicable to each type of insurance coverage being provided; and

(C) The date of expiration of coverage; and

(D) The designation of the TOWN COUNCIL both as an additional insured and as a certificate holder. (This requirement is excepted for Professional Liability Insurance and for Workers' Compensation Insurance); and

(E) A specific reference to this Agreement and the Project to which it pertains. (This requirement may be excepted for Professional Liability Insurance).

In the event the Consultant has, or expects to enter into an agreement for professional services with the Town in addition to those provided for in this Agreement, the Consultant may elect, in the alternative, to submit a certificate of insurance containing the following statement:

"This policy covers the services or work provided or performed by the Named Insured for any and all projects undertaken for the Town of Fort Myers Beach, pursuant to one or more written Professional Services Agreements, or written Supplemental Task Authorizations thereto, and the limit(s) of liability shown shall not be intended or construed as applying to only one project."

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

(F) The following clause must appear on the Certificate of Insurance:

"Cancellation - Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the Certificate Holder named."

(G) A statement indicating any services or work included in or required under this Agreement that is specifically excluded or exempted from coverage under the provisions, terms, conditions or endorsements of the Consultant's insurance policy(s). A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements, the Town will proceed with the understanding, stipulation and condition that there are no deductible amount(s), or exclusions or exemptions to the insurance coverage(s) provided.

(6) Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by and on behalf of the insurance company affording the insurance coverage(s) indicated on each Certificate of Insurance.

(7) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of this Agreement, the Consultant shall furnish to the Town renewal or replacement Certificate(s) of Insurance, or Certified Binder(s), not later than fifteen (15) calendar days prior to the date of their expiration. Failure of the Consultant to provide the Town with such renewal certificate(s) shall be considered justification for the Town to terminate this Agreement.

(8) If any of the insurance coverage(s) required by this Agreement shall reach the date of expiration indicated on the approved Certificate(s) of Insurance without the Town having received satisfactory evidence of renewal or replacement, the Consultant shall automatically and without further notice stop performing all previously authorized services and work. During any time period that the Consultant's services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the Consultant shall not be entitled to any additional compensation or time to provide and perform the required services or work and the Town shall not be required to make payment on any invoices submitted by the Consultant. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the Town.

Section Three. Insurance Coverages Required

The Consultant shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

(1) WORKERS' COMPENSATION

Coverage to comply for all employees for statutory limits in compliance with the applicable State and Federal laws. In addition, the policy must include the following:

(A) Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of $_____for each accident, whichever limit is greater.

(B) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the Town with thirty (30) days prior written notice of cancellation and/or restriction.

(2) COMMERCIAL GENERAL LIABILITY

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

(A) Minimum limits of $_____per occurrence and $_____aggregate for Bodily Injury Liability and a minimum limit of $_____for Property Damage Liability, or a minimum combined single limit of $_____.

(B) Contractual coverage applicable to this specific Agreement including any hold harmless and/or such indemnification agreement.

(C) Such additional requirements as are set forth in Article 12.01 and 12.02 hereinabove.

(3) BUSINESS AUTOMOBILE LIABILITY

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

(A) Minimum limits of $_____per person and $_____per accident for Bodily Injury Liability and a minimum limit of $_____for Property Damage Liability, or a minimum combined single limit of $_____.

(B) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

(C) Such additional requirements as are set forth in Articles 12.01 and 12.02 hereinabove.

(4) PROFESSIONAL LIABILITY

Coverage must include the following:

(A) A minimum aggregate limit of $_____.

(B) Such additional requirements as are set forth in Articles 12.01 and 12.02 hereinabove.

(C) Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits be written so as to provide an applicable deductible amount, or other exclusion or limitation as to the amount of coverage to be provided within the minimum coverage limits set forth above, the Town shall hold the Consultant responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible amount, exclusion or limitation, the Consultant shall be required to provide written documentation that is acceptable to the Town establishing that the Consultant has the financial resources readily available to cover damages, injuries and/or losses which are not covered by the policy's deductible amounts, exclusions and/or limitations as stated above.

EXHIBIT H

Date: _____, 2009

AMENDMENT TO ARTICLES FOR THE PROJECT ENTITLED:

[PROJECT NAME]

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

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

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

AMENDMENT NO.

ARTICLE No.___ is hereby amended as follows:

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