

DOCUMENT ROUTING FORM

3 ✓

8/17/10

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NAME OF DOCUMENT: Agreement with Nodarse & Assoc., Inc. for a Two Year Contract for Geotechnical Engineering and Laboratory Testing Services with the Public Works Department

Approved at Commission Meeting July 7, 2010 CAR# 10-0999

ITEM: [x] Pur.-07 [ ] PH - [ ] O - [ ] CR - [ ] R

Routing Origin: [x] CITY ATTORNEY'S OFFICE: [ ] ENGINEERING [ ] COMMUNITY DEV.

[ ] OTHER

Also attached: [x] copy of CAR [x] copy of document [x] ACM Form [x] # 3 originals

By: forwarded to: Initials

1.) Approved as to Content: [Signature] Department Director

2.) Approved as to Funds Available: by [Signature] Finance Director Date: 07-19-10

Amount Required by Contract/Agreement \$ N/A Funding Source: Dept./Div. Eng/Utilities Index/Sub-object As need basis Project # Various see attach.

3.) City Attorney's Office: Approved as to Form:# Originals to City Mgr. By: Harry A. Stewart Sharon Miller Robert B. Dunckel Ginger Wald D'Wayne Spence Paul G. Bangel Carrie Sarver DJ Williams-Persad Victoria Minard

4.) Approved as to content: Assistant City Manager: By: Allyson Love, Assistant City Manager By: [Signature] Ted Lawson, Assistant City Manager

5.) City Manager: Please sign as indicated and forward :# originals to Mayor. 6.) Mayor: Please sign as indicated and forward :# originals to Clerk. 7.) To City Clerk for attestation and City seal.

INSTRUCTIONS TO CLERK'S OFFICE

8.) City Clerk: retains one original document and forwards 2 original documents to Carol Sayer, Eng. [x] Copy of document to CAO/Karen B. [x] Original Route form to CAO/Karen B. [ ] Attach certified copies of Reso. # [ ] Fill-in date

8-14

# COMMISSION AGENDA REPORT

COMMISSION MEETING DATE: 07-07-2010 AGENDA ITEM: PUR-07

COMMISSION REPORT NO: 10-0999

PREPARED BY: Albert Carbon 06-25-2010 11:05:14

DEPT: Public Works

DEPARTMENT DIRECTOR'S SIGNATURE  
Peter R. Partington, P.E. City Engineer, 954-828-5240

AUTHOR'S NAME, TITLE, AND TELEPHONE NUMBER  
George Gretsas 06-30-2010 15:38:44

CITY MANAGER'S SIGNATURE  
TITLE 1: 206-10409 - ANNUAL GEOTECHNICAL ENGINEERING AND LABORATORY TESTING

TITLE 2:

SUBJECT:  
Two-year contract for geotechnical engineering and laboratory testing services is being presented for approval by Public Works Department.

REQUESTED ACTION (STAFF RECOMMENDATION - CONTENT OF MOTION):  
Motion to approve.

- REGULAR AGENDA
- CONFERENCE
- Motion
- Motion for Discussion
- Old/New Business
- City Commission Reports
- Public Hearing
- Ordinance
- Exec Closed Door
- City Manager Reports
- Resolution
- Presentation
- Conference Reports
- Purchase
- Citizen Presentation
- Advisory Boards
- Consent Resolution

Public Notice Advertised:

FUNDS APPROPRIATION/TRANSFER (provide index code, subobject, and title of subobject):  
Purchases are made on an as-needed basis and charged to the individual projects per available funds and in accordance with established pricing.

## FOR PROCUREMENT ITEMS ONLY

PROCUREMENT REFERENCE NO: 206-10409 TRANSACTION TYPE: Contract

BIDS SOLICITED/RECEIVED: 591/12 WBE: 28/1 LATE BID: 0

Vendor: MBE: 37/3 NO BID: 0

Nodarse & Associates, Inc.  
West Palm Beach, Fl.

Amount: Details:

Procurement Recommendation:  
The Procurement Services Department has reviewed this item and recommends awarding the contract to Nodarse & Associates, Inc.

**Description of Exhibits:**

1. CAR 10-0329	2. Contract	3.
4.	5.	6.
7.	8.	9.

**EXHIBITS: AVAILABLE VIA HARDCOPY: Exhibit #s:**

**PRIOR COMMISSION/BOARD ACTION: (attach additional file if necessary)**

On March 2, 2010 the Commission authorized negotiations with Nodarse & Associates, Inc. CAR 10-0329 is attached as Exhibit 1.

**BACKGROUND/DETAIL:**

The Public Works department has requirements throughout the year for Geotechnical Engineering and Laboratory Testing services for various projects. The Procurement Services Department released a Request for Qualifications in accordance with the Florida Consultants' Competitive Negotiations ACT (CCNA). Twelve responses were received and ranked by the Evaluation committee. The results of this ranking was submitted to the Commission on March 2, 2010, and the Commission authorized negotiations with the first ranked firm Nodarse & Associates, Inc.

This project will provide testing and laboratory services to support design and construction quality assurance testing on the many projects administered through the Utility Engineering and Engineering/Architecture divisions.

Staff has completed the rate negotiations for various types of testing services as well as hourly rates for professional services. Staff is requesting Commission approval to execute the agreement. Funding for this contract will be derived from each individual project for which the services are required.

Staff recommends Commission approval to execute an agreement with Nodarse & Associates, Inc., to provide Geotechnical Engineering and Laboratory Testing Services. for an initial period of two years.

**Attorney's Initials:**

# COMMISSION AGENDA REPORT

COMMISSION MEETING DATE: 03-02-2010 AGENDA ITEM: PUR-10

COMMISSION REPORT NO: 10-0329

PREPARED BY:

Albert Carbon 02-18-2010 15:27:49

DEPT: Public Works

DEPARTMENT DIRECTOR'S SIGNATURE

Peter R. Partington, P.E., City Engineer, 954-828-5240

AUTHOR'S NAME, TITLE, AND TELEPHONE NUMBER

George Gretsas 02-24-2010 14:43:00

CITY MANAGER'S SIGNATURE

TITLE 1: GEOTECHNICAL ENGINEERING AND LABORATORY TESTING SERVICES - CITYWIDE PROJECTS

TITLE 2:

SUBJECT:

A motion accepting the Consultants Competitive Negotiations Act Selection Committee's recommendation of ranking firms - geotechnical engineering and laboratory testing services for citywide projects and authorizing the proper City Officials to commence negotiations with top ranked firm, Nodarse & Associates, Inc.

REQUESTED ACTION (STAFF RECOMMENDATION - CONTENT OF MOTION):

Motion to approve.

REGULAR AGENDA

CONFERENCE

- |                                           |                                             |                                          |                                               |
|-------------------------------------------|---------------------------------------------|------------------------------------------|-----------------------------------------------|
| <input type="radio"/> Motion              | <input type="radio"/> Motion for Discussion | <input type="radio"/> Old/New Business   | <input type="radio"/> City Commission Reports |
| <input type="radio"/> Public Hearing      | <input type="radio"/> Ordinance             | <input type="radio"/> Exec Closed Door   | <input type="radio"/> City Manager Reports    |
| <input type="radio"/> Resolution          | <input type="radio"/> Presentation          | <input type="radio"/> Conference Reports |                                               |
| <input checked="" type="radio"/> Purchase | <input type="radio"/> Citizen Presentation  | <input type="radio"/> Advisory Boards    |                                               |
| <input type="radio"/> Consent Resolution  |                                             |                                          |                                               |

Public Notice Advertised:

FUNDS APPROPRIATION/TRANSFER (provide index code, subobject, and title of subobject):

Purchases are made on an as needed basis and charged to the individual projects in accordance with established pricing.

## FOR PROCUREMENT ITEMS ONLY

PROCUREMENT REFERENCE NO: 206-10409 TRANSACTION TYPE: Contract

BIDS SOLICITED/RECEIVED: 591/12 WBE: 28/1 LATE BID: 0

Vendor: MBE: 37/3 NO BID: 0

Nodarse & Associates, Inc.  
West Palm Beach, Fl.

Amount: N/A Details:

Procurement Recommendation:

The Procurement Services Department has reviewed this item and recommends awarding to the first ranked proposer.

**Description of Exhibits:**

1.	Ex.-1 Score Sheets	2.		3.	
4.		5.		6.	
7.		8.		9.	

**EXHIBITS: AVAILABLE VIA HARDCOPY: Exhibit #s:**

**PRIOR COMMISSION/BOARD ACTION: (attach additional file if necessary)**

**BACKGROUND/DETAIL:**

On January 5, 2010, twelve responses were received to a Request for Qualifications (RFQ) to provide Geotechnical Engineering & Laboratory Testing Services under a Continuing Contract. These consulting services are being procured in compliance with the Consultants' Competitive Negotiations Act (CCNA). On February 1, 2010, a Selection Committee consisting of City staff reviewed and ranked the submittals in accordance with pre-established rating criteria. The Committee consisted of the following staff members: Barbara Howell - WaterWorks Administrative Assistant, Stan Edwards - WaterWorks Engineer, Jay Sajadi - Public Works Project Engineer, Raymond Nazaire - Project Engineer, Engineering Division and Dane Esdelle - Engineering Inspector Supervisor - Construction Management Division. The Committee short-listed the respondents to the following four firms: Nodarse & Associates, Inc., Dunkelberger Engineering, Mactec Engineering and Gannett Fleming. The short-listed firms provided presentations and were interviewed by the Committee on February 15, 2010. After final evaluations, the Committee ranked the firm Nodarse & Associates, Inc., first overall. The selected firm will enter into a continuing contract for Geotechnical Engineering & Laboratory Testing Services for various City projects. Work will be assigned by task order for construction projects of various sizes and sites. The initial contract will be for two years, and the City reserves the right to renew the contract for two subsequent one-year terms. Staff recommends Commission approval of the Committee's ranking and request authority to commence contract negotiations with the top ranked firm, Nodarse & Associates, Inc. Funding for the task orders will be derived from various projects as deemed appropriate.

**Attorney's Initials:**

AGREEMENT

Between

City of Fort Lauderdale

and

Nodarse & Associates, Inc.

for

CONSULTANT SERVICES

A Continuing Contract for

**Geotechnical Engineering and Laboratory Testing Service -  
Annual Contract**

## AGREEMENT

THIS IS AN AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_ 200\_\_,  
by and between:

CITY OF FORT LAUDERDALE, a municipal  
Corporation of the State of Florida, (hereinafter  
referred to as "CITY")

and

Nodarse & Associates, Inc., a Florida  
Corporation (hereinafter referred to as  
"CONSULTANT").

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida at its meeting of \_\_\_\_\_, 200\_\_ authorized the proper officials by motion to execute this Agreement between CONSULTANT and CITY authorizing the performance of services in connection with a continuing contract for Geotechnical Engineering and Laboratory Testing Service - Annual Contract and

WHEREAS, the CONSULTANT is willing and able to render professional services for such project for the compensation and on the terms hereinafter set forth; and

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

### ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are therefore agreed upon by the parties.

- 1.1 **AGREEMENT**: Means this document between the CITY and CONSULTANT dated \_\_\_\_\_, 200\_\_ and any duly authorized and executed Amendments to Agreement.
- 1.2 **CERTIFICATE FOR PAYMENT**: A statement by CONSULTANT based on observations at the site and on review of documentation submitted by the Contractor that by its issuance recommends that CITY pay identified amounts to the Contractor for services performed by the Contractor at the Project.
- 1.3 **CHANGE ORDER**: A written order to the Contractor, addressing modifications to the contract documents, and establishing the basis of payment and contract time

adjustment, if any, for the work affected by such modifications. The CONSULTANT shall review and make recommendations to the CITY on any proposed Change Orders, for approval or other appropriate action by the CITY.

- 1.4 **CITY**: The City of Fort Lauderdale, a municipal corporation of the State of Florida.
- 1.5 **COMMISSION**: The City Commission of the City of Fort Lauderdale, Florida, which is the governing body of the CITY government.
- 1.8 **CONSTRUCTION DOCUMENTS**: Those working drawings and specifications and other writings setting forth in detail and prescribing the work to be done, the materials, workmanship and other requirements for construction of the entire Project, including any bidding information.
- 1.9 **CONSULTANT**: Nodarse & Associates, Inc., the CONSULTANT selected to perform professional services pursuant to this Agreement.
- 1.10 **CONTRACT ADMINISTRATOR**: The City Engineer of the City of Fort Lauderdale, or his designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.
- 1.12 **NOTICE TO PROCEED**: A written Notice to Proceed with the Project issued by the Contract Administrator.
- 1.15 **PROJECT**: An agreed scope of work for accomplishing a specific plan or work assigned under the scope of services. The services to be provided by the CONSULTANT shall be as defined in this Agreement and further detailed in Task / Work Orders for Laboratory Testing on individual construction projects or combinations of projects.
- 1.18 **SPECIFICATIONS**: The specifications referred to in this Agreement are the CONSTRUCTION STANDARDS AND SPECIFICATIONS, Office of the City Engineer, City of Fort Lauderdale, January 1982, including any revisions.
- 1.19 **STATEMENT OF PROBABLE PROJECT COSTS**: A document to be prepared by the CONSULTANT which shall reflect a detailed statement of the total probable costs.
- 1.20 **TASK (or WORK) ORDER**: A document setting forth a detailed scope of services to be performed by CONSULTANT upon authorization of the CITY. In this contract document, Task Order and Work Order are interchangeable.
- 1.21 **TIME OF COMPLETION**: Time in which the entire work shall be completed for each Task Order.

ARTICLE 2  
PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions of this Agreement which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 City has budgeted funds for the Project.

This Project is funded with City funds.

- 2.2 Pursuant to Section 287.055, Florida Statutes, the City has formed a Committee to evaluate the CONSULTANT's statement of qualifications and performance data to ensure that the CONSULTANT has met the requirements of the Consultants' Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, and has selected CONSULTANT to perform services hereunder.

ARTICLE 3  
SCOPE OF SERVICES

- 3.1 The CONSULTANT shall perform the following professional services: Geotechnical Engineering and Laboratory Testing Service - Annual Contract, more specifically described in Exhibit "A," Scope of Services, attached hereto and incorporated herein, and shall include, but not be limited to, services as applicable and authorized by individual Task Orders for the individual projects in accordance with Article 5 herein. CONSULTANT shall provide all services set forth in Exhibit "A" upon request, including all necessary, incidental and related activities and services required by the Scope of Services and contemplated in CONSULTANT's level of effort.
- 3.2 CITY and CONSULTANT acknowledge that the Scope of Services does not delineate every detail and minor work tasks required to be performed by CONSULTANT to complete the Project. If, during the course of the performance of the services included in this Agreement, CONSULTANT determines that work should be performed to complete the Project which is in the CONSULTANT's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSULTANT shall notify Contract Administrator and obtain written approval by the CITY in a timely manner before proceeding with the work. If CONSULTANT proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or

approval by CITY to perform the work. Performance of work by CONSULTANT outside the originally anticipated level of effort without prior written CITY approval is at CONSULTANT's sole risk.

ARTICLE 4  
GENERAL PROVISIONS

- 4.1 Negotiations pertaining to the professional services to be performed by the CONSULTANT have been undertaken between CONSULTANT and CITY representatives pursuant to Section 287.055, Florida Statutes, and this Agreement incorporates the results of such negotiation.
- 4.2 CONSULTANT shall include CITY's specific Task Order number as part of the heading on all correspondence, invoices and drawings. All correspondence shall be directed specifically to the Contract Administrator.

ARTICLE 5  
TASK (WORK) ORDERS

- 5.1 The Project will be divided into "Tasks."
- 5.2 Task Orders shall be jointly prepared by the CITY and CONSULTANT defining the detailed scope of services to be provided for the particular Project. Each Task Order shall be separately numbered and approved in accordance with this Agreement (and applicable CITY purchasing code requirements).
- 5.3 Under all Task Orders and Projects, CITY may require the CONSULTANT, by specific written authorization, and for mutually agreed upon additional compensation, to provide or assist in obtaining one or more of the following special services. These services may include, at the discretion of the CITY, the following items:
  - 5.3.1 Providing additional copies of reports, contract drawings and documents; and
  - 5.3.2 Other design and construction testing services as may be required for municipal projects; and
  - 5.3.3 Assisting the City with litigation support services arising from the planning, development, or construction.

- 5.4 Prior to initiating the performance of any services under this Agreement, CONSULTANT must receive a written Notice to Proceed / Purchase Order from the CITY. The CONSULTANT must receive the approval of the Contract Administrator or his designee in writing prior to beginning the performance of services in any subsequent Task Order under this Agreement.
- 5.5 If, in the opinion of the CITY, the CONSULTANT is improperly performing the services under a specific Task Order, or if at any time the CITY shall be of the opinion that said Task Order is being unnecessarily delayed and will not be completed within the agreed upon time, the CITY shall notify the CONSULTANT in writing. The CONSULTANT has within ten (10) working days thereafter to take such measures as will, in the judgment of the CITY, ensure satisfactory performance and completion of the work. If the CONSULTANT fails to cure within the ten (10) working days, the CITY may notify the CONSULTANT to discontinue all work under the specified Task Order. The CONSULTANT shall immediately respect said notice and stop said work and cease to have any rights in the possession of the work and shall forfeit the Task Order and any remaining monies. The CITY may then decide, after City Commission approval, to issue a new Task Order for the uncompleted work to another consultant using the remaining funds. Any excess costs arising therefrom over and above the original Task Order price shall be charged against CONSULTANT, as the original CONSULTANT.

#### ARTICLE 6

#### TERM OF AGREEMENT; TIME FOR PERFORMANCE

- 6.1 The initial term of this Agreement shall be for two (2) years from the date of this Agreement. The CITY shall have the option to renew this Agreement for two (2) successive one (1) year terms under the same terms, conditions, and compensation as set forth herein.
- 6.2 CONSULTANT shall begin the requested testing not later than twenty four (24) hours after receiving a Work/Task Order and must submit the test results to the City within two (2) days for tests that can be properly completed within that time. Also, the CONSULTANT shall provide the CITY with the original written test results within seven (7) days of performance of the test, unless otherwise stated in the Work Order at the discretion of the CITY. Submittal may be via fax or e-mail.
- 6.3. All test reports shall meet the requirements of ASTM D4220, Paragraph 8, and shall include the City project number and City Engineering (Project Engineer, Engineering Inspector, Inspector Supervisor) representative's name under which the test was performed, as well as the name of the General Contractor performing the project and the time the test was performed. Failure to include this information on each test report (specifically providing test results within two

(2) days) will result in rejection of payment request for that report. Repeated failure to comply with this provision shall constitute grounds for terminating this Agreement.

- 6.4. In the event the CONSULTANT is unable to complete the services on the date as established because of causes beyond the control of the CONSULTANT, and provided such delays are not the fault of the CONSULTANT, CITY shall grant a reasonable extension of time for completion of the work assignment. It shall be the responsibility of the CONSULTANT to notify CITY promptly in writing whenever a delay is anticipated or experienced, and to inform CITY of all facts and details related to the delay.
- 6.5. CONSULTANT technicians performing the requested testing shall carry on their person a message pager, radio communication device or cellular phone to allow them to communicate with CITY inspectors and the CONSULTANT'S main office.
- 6.6. Prior to beginning the performance of any services under this Agreement, CONSULTANT must receive a Notice to Proceed. CONSULTANT must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent phases of the Agreement. Prior to granting approval for CONSULTANT to proceed to a subsequent phase, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit itemized deliverables/documents for the Contract Administrator's review.
- 6.7. The time for the performance of services described in assigned Task Orders shall be negotiated by the CITY and the CONSULTANT as the services are requested and authorized by the CITY.

## ARTICLE 7 COMPENSATION AND METHOD OF PAYMENT

### 7.1 AMOUNT AND METHOD OF COMPENSATION

The method of compensation for each Task Order shall either be Lump Sum, or Hourly Rates as detailed herein, as agreed upon per Task Order and described in Section 7.1.1 or 7.1.2 below. The fee for the services to be performed by CONSULTANT shall include all costs, expenses and fees.

#### 7.1.1 Lump Sum Compensation

CITY agrees to pay CONSULTANT as compensation for performance of all services as related to each Task Order required under the terms of this Agreement a Lump Sum as agreed upon per Task Order. This compensation does not include Reimbursables as described in Section 7.2. It is understood that the method of compensation is that of Lump Sum, which means that

CONSULTANT shall perform all services set forth for total compensation in the amount mutually agreed upon by CITY and CONSULTANT. The billing rate schedule for CONSULTANT, which will be used in negotiating each Task Order, is attached as Exhibit "B" to this Agreement.

A lump sum proposal shall be accompanied by the CONSULTANT's estimate. The estimate shall detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; direct non-salary expenses; and profit, or as required by individual Task Order.

#### 7.1.2 Rates

CITY agrees to pay CONSULTANT as compensation for performance of all services as related to each Task Order under the terms of this Agreement a rate as agreed upon per Task Order. This compensation does not include Reimbursables as described in Section 7.2. The rate-billing schedule to be used in negotiating each Task Order is attached as Exhibit "B" to this Agreement. As described in Section 9.1, no modification, amendment, or alteration to Exhibit "B" shall be effective unless contained in a written document prepared with the same formality as this Agreement and executed by the City and CONSULTANT.

#### 7.2 REIMBURSABLES

7.2.1 Direct non-salary expenses, entitled Reimbursables, directly attributable to the Project will be charged at actual cost. Reimbursable expenses are in addition to the compensation for basic services and include actual expenditures made by the CONSULTANT and the CONSULTANT'S employees directly attributable to the Project and will be charged at actual cost, without reference to the professional service fees above. CITY shall not withhold retainage from payments for Reimbursable Expenses. CONSULTANT shall be compensated for Reimbursables associated with a particular Task Order only up to the amount allocated for such Task Order. Any reimbursable or portion thereof which, when added to the Reimbursables related to a particular Task Order previously billed, exceeds the amount allocated for such Task Order shall be the responsibility of the CONSULTANT unless otherwise agreed to in writing by the Contract Administrator. Reimbursables shall include only the following listed expenses unless authorized in writing by the Contract Administrator:

- a) Extra travel and subsistence for the CONSULTANT and his staff beyond the Tri-County area (Broward, Dade and Palm Beach Counties), when authorized in advance by the CITY. CONSULTANT will make all reasonable efforts to obtain discounted rates to the extent available. Travel related expenses shall be consistent with City of Fort Lauderdale Travel Policy and may include: air fare, hotels, meals, baggage handling, rental car, tolls, parking, airport van/taxi, fuel and other similar expenses.

Expenses shall be limited to reasonable amounts as determined by the City Travel Policy, and requires prior approval of Contract Administrator or his designee before expenditures are made. Identifiable per diem, meals and lodgings, taxi fares and miscellaneous travel-connected expenses for CONSULTANT's personnel are subject to the limitations of Section 112.061 Florida Statutes. Meals for Class C travel inside Broward County will not be reimbursed. Meals and lodging expenses will not be reimbursed for temporarily relocating CONSULTANT's employees from one of CONSULTANT's offices to another office if the employee is relocated for more than ten (10) consecutive working days.

- b.) Identifiable testing costs approved by Contract Administrator.
- c) All permit fees paid to regulatory agencies for approvals directly attributable to the Project. These permit fees do not include those permits required for the construction Contractor.
- d) Overnight Delivery/Courier Charges (when CITY requires/requests this service).

7.2.2 Reimbursable subconsultant expenses are limited to the items described above when the subconsultant agreement provides for reimbursable expenses. A detailed statement of expenses must accompany any request for reimbursement. Local travel to and from the Project site or within the Tri-County Area will not be reimbursed.

7.2.3 It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in each Task Order is a limitation upon, and describes the maximum extent of CITY's obligation to reimburse CONSULTANT for direct, nonsalary expenses, but does not constitute a limitation, of any sort, upon CONSULTANT's obligation to incur such expenses in the performance of services hereunder. If CITY or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursables, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by CITY prior to incurring such expenses.

### 7.3 METHOD OF BILLING

#### 7.3.1 Lump Sum Compensation

CONSULTANT shall submit billings that are identified by the specific Task Order number on a monthly basis in a timely manner. These billings shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished. Billings of each phase shall not exceed the amounts allocated to said phase. A master invoice shall be prepared that summarizes

each test to be invoiced during the invoice period. The master invoice shall include the following for each test to be invoiced: project number, project name and/or description, address of project and/or test, Engineering contact person, date of test, time of test and one (1) certified copy of test report.

Each rate shall be included with the master invoice with required backup as follows:

- a. Hourly Rate Invoices. Invoices for hourly rate will set forth the number of service hours rendered by labor category. Detail will be provided which outlines the CONSULTANT staff utilized in each labor category as provided above. The hour per task of various CONSULTANT personnel set forth in any Hourly Rate Invoice for which the CONSULTANT seeks payments will require CITY's review and approval prior to any payment of that Hourly Rate Invoice.
- b. Lump Sum elements of Rate Invoices, will require CITY's review and approval prior to any payment of that Invoice or portion of that Invoice.

#### 7.4 METHOD OF PAYMENT

7.4.1 CITY shall make every effort to pay CONSULTANT within thirty (30) calendar days of receipt of CONSULTANT'S proper invoice. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator.

7.4.2 CITY will review CONSULTANT's invoices and, if inaccuracies or errors are discovered in said invoice, CITY will inform CONSULTANT within twenty (20) working days by fax and by mail of such inaccuracies or errors and request that revised copies of all such documents be re-submitted by CONSULTANT to CITY.

7.4.3 Payment will be made to CONSULTANT at:

Nodarse & Associates, Inc. Attn: Accounts Receivable  
~~2448 Metrocentre Blvd.~~ 1675 Lee Road  
~~West Palm Beach, FL 33407~~ Winter Park, FL 32789

### ARTICLE 8

#### ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

8.1 CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under a Task Order. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of the Task Order including the initiation of any

additional services. CITY shall compensate CONSULTANT for such additional services as provided in Article 7.

- 8.2.1 In the event a dispute between the Contract Administrator and CONSULTANT arise over whether requested services constitute additional services and such dispute cannot be resolved by the Contract Administrator and CONSULTANT, such dispute shall be promptly presented to the Contract Administrator's Department Director for resolution. The Director's decision shall be final and binding on the parties. Any resolution in favor of CONSULTANT shall be set forth in a written document in accordance with Section 8.1 above. During the pendency of any dispute, CONSULTANT shall promptly perform the disputed services.

#### ARTICLE 9 AMENDMENTS

- 9.1 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written Amendment prepared with the same formality as this Agreement and executed by the CITY and CONSULTANT.

#### ARTICLE 10 CITY'S RESPONSIBILITIES

- 10.1 CITY shall assist CONSULTANT by placing at CONSULTANT's disposal all information CITY has available pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 10.2 CITY shall arrange for access to, and make all provisions for, CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services.
- 10.3 CITY shall review the itemized deliverables/documents identified per Task Order.
- 10.4 CITY shall give prompt written notice to CONSULTANT whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work of the Contractor.

ARTICLE 11  
MISCELLANEOUS

11.1 OWNERSHIP OF DOCUMENTS

Conditioned on final payment to the CONSULTANT, all documents including, but not limited to, drawings, renderings, models, and specifications prepared or furnished by CONSULTANT, its dependent professional associates and consultants, pursuant to this Agreement shall be owned by the CITY.

Drawings, specifications, designs, models, photographs, reports, surveys and other data prepared in connection with this Agreement are and shall remain the property of the CITY whether the Project for which they are made is executed or not, and are subject to reuse by the CITY in accordance with Section 287.055(10) of the Florida Statutes. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of this Project or on any other project without appropriate verification or adaptation. This does not, however, relieve the CONSULTANT of liability or legal exposure for errors, omissions, or negligent acts made on the part of the CONSULTANT in connection with the proper use of documents prepared under this Agreement. Any such verification or adaptation may entitle the CONSULTANT to further compensation at rates to be agreed upon by the CITY and the CONSULTANT. This shall not limit the City's reuse of preliminary or developmental plans or ideas incorporated therein, should the Project be suspended or terminated prior to completion.

11.2 TERMINATION

11.2.1 It is expressly understood and agreed that the CITY may terminate this Agreement at any time by giving the CONSULTANT notice by telephone, or personally to one of the officers of the CONSULTANT, confirmed by certified mail, return receipt requested, to the principal office of the CONSULTANT. In the event that the Agreement is terminated, the CONSULTANT shall be entitled to be compensated for the services rendered from the date of execution of the Agreement up to the time of termination. Such compensation shall be based on the fee as set forth above, wherever possible. For those portions of services rendered to which the applicable fee cannot be applied, payment shall be based upon the appropriate rates for the actual time spent on the project. In the event that the CONSULTANT abandons this Agreement or through violation of any of the terms and conditions of this Agreement, causes it to be terminated, CONSULTANT shall indemnify the CITY against any loss pertaining to this termination. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT shall become the property of CITY and shall

be delivered by CONSULTANT to the CITY within five (5) days of CITY's request. Upon payment of such sum by CITY to CONSULTANT, CITY shall have no further duties or obligations pursuant to or arising from this Agreement. CONSULTANT shall have the right to terminate this Agreement upon the substantial breach by the CITY of its obligations under this Agreement such as unreasonable delay in payment or non-payment of undisputed amounts.

11.2.2 This Agreement may also be terminated by CITY upon such notice as CITY deems appropriate under the circumstances in the event CITY or Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.

11.2.3 Notice of termination shall be provided in accordance with Section 11.26, NOTICES, except that Contract Administrator may provide a prior verbal stop work order if the Contract Administrator deems a stop work order of this Agreement in whole or in part is necessary to protect the public health, safety, or welfare. A verbal stop work order shall be promptly confirmed in writing as set forth in Section 11.26, NOTICES.

11.2.4 In the event this Agreement is terminated for convenience, CONSULTANT shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 11.3 of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment for services which have not been performed.

### 11.3 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of CONSULTANT that are related to this Project. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

CONSULTANT shall preserve and make available, at reasonable times for examination and audit by CITY all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONSULTANT's

records, CONSULTANT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

11.4 NON DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

CONSULTANT shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination or the basis of disability), and all applicable regulations, guidelines, and standards.

CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

CONSULTANT shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

CONSULTANT shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

## 11.5 MINORITY PARTICIPATION

Historically, the CITY has been able to achieve participation levels of approximately twelve percent (12%) by MBE/WBE firms in CITY projects, and in the purchase of goods and services. The CONSULTANT shall make a good faith effort to help the CITY maintain and encourage MBE/WBE participation levels consistent with such historical levels and market conditions. The CONSULTANT will be required to document all such efforts and supply the CITY with this documentation at the end of the Project, or in cases where projects are longer than one year, each CITY fiscal year.

## 11.6 PUBLIC ENTITY CRIMES ACT

CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a "public entity crime", as defined by Section 287.133, Florida Statutes, may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subconsultant, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from CITY's competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

## 11.7 SUBCONSULTANTS

11.7.1 CONSULTANT may subcontract certain items of testing. The parties expressly agree that the CONSULTANT shall submit pertinent information regarding the proposed subconsultant(s), including subconsultant's scope of work and fees, for review and approval by the CITY prior to subconsultants proceeding with any test.

11.7.2 CONSULTANT shall utilize the subconsultants identified in the proposal that were a material part of the selection of CONSULTANT to provide the services for this Project. CONSULTANT shall obtain written approval of Contract Administrator prior to changing or modifying the list of subconsultants submitted by CONSULTANT.

The list of subconsultants submitted is as follows:

Advance Consulting Engineering Services, Inc. (Roof Consultants)  
7800 W. Oakland Park Blvd.  
Sunrise, FL 33351  
954-746-6898

#### 11.8 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other party, and CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 11.7.

CONSULTANT represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY's satisfaction for the agreed compensation.

CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT's performance and all interim and final product(s) provided to or on behalf of CITY shall meet or exceed all professional standards of the State of Florida.

#### 11.9 INDEMNIFICATION OF CITY

11.9.1 CONSULTANT shall indemnify and hold harmless CITY, its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of CONSULTANT, and other persons employed or utilized by CONSULTANT in the performance of the duties under this Agreement. The provisions of this Section shall survive the expiration or early termination of this Agreement. To the extent considered necessary by Contract Administrator and City Attorney, any sums due to the CONSULTANT under this Agreement may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by CITY.

11.9.2 It is specifically understood and agreed that the consideration inuring to the CONSULTANT for the execution of this Agreement are the promises, payments, covenants, rights and responsibilities contained herein and the award of this Agreement to the CONSULTANT.

11.9.3 The execution of this Agreement by the CONSULTANT shall obligate the CONSULTANT to comply with the foregoing indemnification provision.

#### 11.10 INSURANCE

11.10.1 CONSULTANT shall provide and shall require all of its sub-consultants and sub-contractors to provide, pay for, and maintain in force at all times during the term of the Agreement, such insurance, including Professional Liability Insurance, Workers' Compensation Insurance, Comprehensive General or Commercial Liability Insurance, Business Automobile Liability Insurance, and Employer's Liability Insurance as stated below. Such policy or policies shall be issued by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida. CONSULTANT shall specifically protect CITY and the City Commission by naming CITY as additional insureds under the Comprehensive Liability Insurance policy hereinafter described.

A. Workers' Compensation Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable Federal laws, for the benefit of the CONSULTANT's employees.

B. Sub-consultants not eligible for Professional Liability Coverage, by virtue of their trade, shall provide Commercial General Liability coverage acceptable to the Contract Administrator and City's Risk Manager. Sub-consultant and sub-contractors eligible for professional liability coverage shall be required to provide professional liability coverage acceptable to the Contract Administrator and City's Risk Manager on a Task Order by Task Order basis.

C. The CONSULTANT shall provide the Risk Manager of the CITY an original Certificate of Insurance for policies required by Article 11. All certificates shall state that the CITY shall be given thirty (30) days notice prior to expiration or cancellation of the policy. Such policies shall: (1) name the insurance company or companies affording coverage acceptable to the CITY, (2) state the effective and expiration dates of the policies, (3) include special endorsements where necessary. Such policies provided under Article 11 shall not be affected by any other policy of insurance, which the CITY may carry in its own name.

D. CONSULTANT shall as a condition precedent of this Agreement, furnish to the City of Fort Lauderdale, c/o Procurement Services Department, 100 N. Andrews Avenue, #619, Fort Lauderdale, FL 33301, Certificate(s) of Insurance upon execution of this Agreement, which indicate that insurance coverage has

been obtained which meets the requirements as outlined below:

11.10.2. COMMERCIAL GENERAL LIABILITY

- A. Limits of Liability
  - Bodily Injury and Property Combined Single Limit
  - Each Occurrence \$1,000,000
  - General Aggregate Limit \$2,000,000
  - Personal Injury \$1,000,000
  - Products/Completed Operations \$1,000,000
  
- B. Endorsements Required
  - City of Fort Lauderdale included as an Additional Insured
  - Employees included as insured
  - Contractual Liability
  - Waiver of Subrogation
  - Premises/ Operations

11.10.3. AUTOMOBILE BUSINESS

- A. Limits of Liability
  - Bodily Injury and Property Damage Liability Combined Single Limit
  - Any Auto
  - Including Hired, Borrowed or Non-Owned Autos
  - Any One Accident \$1,000,000

11.10.4 WORKERS' COMPENSATION

Limits of Liability  
Statutory-State of Florida

11.10.5 PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS COVERAGE

Combined Single Limit  
Each Occurrence \$1,000,000  
General Aggregate Limit \$2,000,000  
Deductible- not to exceed 10%

11.10.6 The City is required to be named as additional insured. BINDERS ARE UNACCEPTABLE. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the CONSULTANT.

11.10.7 All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The Company must be rated no less than "A -" as to management, by the latest edition of Best's Key Rating Insurance Guide which holds a valid Florida Certificate of Authority issued by the State of Florida, Department of Insurance, and are members of the Florida Guarantee Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

NOTE: CITY PROJECT NUMBER MUST APPEAR ON EACH CERTIFICATE.

Compliance with the foregoing requirements shall not relieve the CONSULTANT of his liability and obligation under this section or under any other section of this Agreement.

The CONSULTANT shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the Project. If insurance certificates are scheduled to expire during the contractual period, the CONSULTANT shall be responsible for submitting new or renewed insurance certificates to the CITY at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates that cover the contractual period, the CITY shall:

- A) Suspend the Agreement until such time as the new or renewed certificates are received by the CITY in the manner prescribed in the RFQ.
- B) The CITY may, at its sole discretion, terminate the Agreement for cause and seek damages from the CONSULTANT in conjunction with the violation of the terms and conditions of the Agreement.

#### 11.11 REPRESENTATIVE OF CITY AND CONSULTANT

11.11.1 The parties recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon CONSULTANT's request, shall advise CONSULTANT in writing of one (1) or more CITY employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

11.11.2 CONSULTANT shall inform the Contract Administrator in writing of CONSULTANT's representative to whom matters involving the conduct of the Project shall be addressed.

#### 11.12 ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

#### 11.13 CONSULTANT'S STAFF

CONSULTANT will provide the key staff identified in their proposal for the Project as long as said key staff are in CONSULTANT's employment.

CONSULTANT will obtain prior written approval of Contract Administrator to change key staff. CONSULTANT shall provide Contract Administrator with such information as necessary to determine the suitability of any proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications.

If Contract Administrator desires to request removal of any of CONSULTANT's staff, Contract Administrator shall first meet with CONSULTANT and provide reasonable justification for said removal.

#### 11.14 INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor under this Agreement. Services provided by CONSULTANT shall be subject to the supervision of CONSULTANT. In providing the services, CONSULTANT or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the CITY. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

#### 11.15 THIRD PARTY BENEFICIARIES

Neither CONSULTANT nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

#### 11.16 CONFLICTS

Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment related to its performance under this Agreement.

CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this Section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONSULTANT is permitted to utilize subconsultants to perform any services required by this Agreement, CONSULTANT agrees to prohibit such subconsultants, by written contract, from having any conflicts as within the meaning of this Section.

#### 11.17 CONTINGENCY FEE

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

#### 11.18 WAIVER OF BREACH AND MATERIALITY

Failure by CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

CITY and CONSULTANT agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

#### 11.19 COMPLIANCE WITH LAWS

CONSULTANT shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

#### 11.20 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CONSULTANT elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the findings by the court become final.

#### 11.21 JOINT PREPARATION

Preparation of this Agreement has been a joint effort of CITY and CONSULTANT and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

#### 11.22 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1-11 of this Agreement shall prevail and be given effect.

#### 11.23 APPLICABLE LAW AND VENUE

This Agreement shall be construed with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement and for any other legal proceeding shall be in Broward County, Florida, and in the event of federal jurisdiction, in the Southern District of Florida.

#### 11.24 EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits, if not physically attached, should be treated as part of this Agreement, and are incorporated herein by reference.

11.25 THREE ORIGINAL AGREEMENTS

This Agreement shall be executed in three (3), signed Agreements, with each one treated as an original.

11.26 NOTICES

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

CITY: City Engineer  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301  
Telephone: (954) 828-5772

CONSULTANT: Nodarse & Associates, Inc.  
2448 Metrocentre Blvd.  
West Palm Beach, FL 33407  
Telephone: 561-616-0870  
Attn: Ms. Rutu Nulkar, P.E.

11.27 ATTORNEY FEES

If CITY or CONSULTANT incurs any expense in enforcing the terms of this Agreement through litigation, the prevailing party in that litigation shall be reimbursed for all such costs and expenses, including but not limited to court costs, and reasonable attorney fees incurred during litigation.

11.28 PERMITS, LICENSES AND TAXES

CONSULTANT shall, at its own expense, obtain all necessary permits and licenses, pay all applicable fees, and pay all applicable sales, consumer, use and other taxes required to comply with local ordinances, state and federal law. CONSULTANT is responsible for reviewing the pertinent state statutes regarding state taxes and for complying with all requirements therein. Any change in tax laws after the execution of this Agreement will be subject to further negotiation and CONSULTANT shall be responsible for complying with all state tax requirements.

11.29 TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONSULTANT shall act as the execution of a Truth-in-Negotiation Certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums, by which the CITY determines that contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.

11.30 EVALUATION

The CITY maintains the right to periodically review the performance of the CONSULTANT. This review will take into account the timely execution of Task Orders, the quality of the work performed, the cost to the CITY and the good faith efforts made by the CONSULTANT to maintain MBE/WBE participation in CITY projects. Any deficiencies in performance will be described in writing and an opportunity afforded, where practicable, for the CONSULTANT to address and/or remedy such deficiencies.

11.31 STATUTORY COMPLIANCE

CONSULTANT shall prepare all documents and other materials for the Project in accordance with all applicable rules, laws, ordinances and governmental regulations of the State of Florida, Broward County, the City of Fort Lauderdale, Florida and all governmental agencies having jurisdiction over the services to be provided by CONSULTANT under this Agreement or over any aspect or phase of the Project.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
[SIGNATURE PAGES FOLLOW]**

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY

WITNESSES:

Safecor A. Malmy  
[Witness signature]

\_\_\_\_\_  
[Print Name]  
M. Skouridakis  
[Witness signature]

Myrianna Skouridakis  
[Print Name]

CITY OF FORT LAUDERDALE:

By [Signature]  
JOHN P. "JACK" SEILER, Mayor

By [Signature]  
~~GEORGE GELTSAS~~, City Manager  
Acting

ATTEST:

[Signature]  
JONDA K. JOSEPH, City Clerk

Approved as to form:

[Signature]  
CARRIE L. SARVER  
Assistant City Attorney

**CONSULTANT**

WITNESSES:

Nodarse & Associates, Inc.

Maivis Treat

Maivis Treat  
(Witness print name)

Wendy Kamikawa

Wendy Kamikawa  
(Witness print name)

By \_\_\_\_\_

Name: Leila Jammal Nodarse

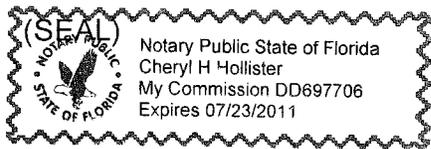
Title: President/CEO



(CORPORATE SEAL)

STATE OF Florida :  
COUNTY OF Orange :

The foregoing instrument was acknowledged before me this 17th day of June, 20010, by Leila Jammal Nodarse as President/CEO of Nodarse & Associates, Inc. He/She is  personally known to me or  has produced \_\_\_\_\_ as identification.



Cheryl H Hollister  
Notary Public, State of  
(Signature of Notary taking Acknowledgment)

Cheryl H Hollister  
Name of Notary Typed, Printed or Stamped

My Commission Expires: 7/23/11

DD697706  
Commission Number

## EXHIBIT A

### SCOPE OF SERVICES

A continuing contract for professional services with a **Geotechnical Engineering** firm to provide **Geotechnical Engineering and Laboratory Testing Services** for various City projects. Work to be accomplished under this contract will include, but not be limited to, various, but not as yet identified, **Geotechnical Engineering** projects. Work will include testing of soil, limerock, concrete and asphalt testing, and any other specialized testing services that may be required for the design and construction of municipal projects. Testing services will be requested on an "as needed" - "when needed" basis. The nature of the work requires that testing laboratories be familiar with the Fort Lauderdale area, possessing a high degree of local information, with local facilities staffed throughout the normal eight (8) hour workday, at least five (5) days per week. In addition, the ability to work nights, holidays, and week-ends will be required when necessary. Quantity of work will vary throughout the contract term.

Firm must provide full **Geotechnical Engineering** /study activity professional services to the City using in-house staff or consultant services.

Consultants/Laboratories shall be equipped to perform the Following Tests:

#### A. Geotechnical Engineering & Construction Material Testing

1. Drilled Rig & Crew Mobilization/demobilization
  - Truck Mounted Rig
  - Mudbug
  - Barge & Amphibious
  
2. Standard Penetration Test & Split-Barrel Sampling of Soils (ASTM D1586)
  - 0 to 50 feet
  - 50 to 100 feet
  - 100 to 150 feet
  - 150 to 200 feet
  
3. Soil Investigation & Sampling by Auger Boring (ASTM D1452)
  - 0 to 50 feet
  - 50 to 100 feet
  
4. Thin-Wall (Shelby Tube) Sampling of Soils (ASTM D1587)
  
5. Rock Core Drilling & sampling (ASTM D2113)
  - 0 to 50 feet
  - 50 to 100 feet
  - 100 to 150 feet
  - 150 to 200 feet
  
6. Grout to seal Borehole
  - 0 to 50 feet
  - 50 to 100 feet
  - 100 to 150 feet
  - 150 to 200 feet
  
7. Piezometer (monitoring well) Installation
  - 0 to 50 feet
  - 50 to 100 feet

8. Laboratory Density-Moisture relations of Soils

Standard Proctor (ASTM D698) AASHTO T-99

Modified Proctor (ASTM D1557) AASHTO T-180

9. Field Density Determination of Soils using Nuclear gauge Method (ASTM D2922)

10. Density of Soils by Drive-cylinder Method (ASTM D2937)

11. Density of Soil by Sleeve Method (ASTM D4564)

12. Limerock Bearing Ratio Test (FM-5-515)

13. Limerock Analysis Test, including carbonates of Calcium & Magnesium, Oxides of Iron & aluminum

14. Laboratory California Bearing Ratio, CBR (ASTM D1883)

15. In-place California Bearing Ratio, CBR (ASTM D4429)

16. Dynamic Cone Electrometer (ASTM D6951)

17. Soil Visual Classifications Test (ASTM D2488)

18. Moisture Content Determination of Soils (ASTM D2216)

19. Atterberg Limits of Soils (ASTM D424)

20. Organic Content Determination of Soils (ASTM D2974)

21. Soils Particle Size Distribution (ASTM D6913)

22. Hydraulic Conductivity of Soils-Constant Head Method (ASTM D2434)

23. Hydraulic Conductivity of Soils using Flexible Wall membrane (ASTM D5084)

24. Field Hydraulic Conductivity Test of Soils (percolation-Exfiltration) Using South Florida Water Management-Constant Head Method)

25. Field Hydraulic Conductivity Test of Soils Using Double Ring Infiltration Method (ASTM D3385)

26. Soil Resistivity Test

- i. Laboratory Method (ASTM G187)
- ii. Field Method (ASTM G57)

27. Fresh Concrete Sampling & Testing

- i. Slump Test (ASTM C143)
- ii. Air Content (ASTM C173 or C231)

28. Compressive Strength Determination of Concrete Cylinders (ASTM C39)

29. Flexural Strength of Concrete Beam (ASTM C78)

30. Casting and Compressive Strength Determination of cub specimens (ASTM C109)

31. Concert Coring and Compressive Strength Determination (ASTM C42)
32. Compressive Strength Determination of In-place Concrete using Rebound Hammer (ASTM C805)
33. Compressive Strength Determination of In-place Concrete using Windsor Probe (ASTM C803)
34. Asphalt Coring and Sampling
35. Bulk Specific Gravity & Density Determination of Compacted Asphalt Cores (ASTM D2726)
36. Maximum Theoretical Density Determination (ASTM D2041)
37. Asphalt Extraction Test (ASTM D2172)
38. Field Density Determination of Asphalt using Nuclear Gauge Method (ASTM D2950)

**B. Field Quality Control/Quality Assurance**

39. Pile Driving Analyzer (PDA)
40. Pile Integrity Testing (PIT)
41. Drilled Shaft Installation Inspection (CTQP Requirements)
42. Auger-cast Pile Inspection
43. Crosshole Sonic Logging (CSL) of Drilled Shafts

**C. Structural Testing**

44. Welding Inspection
45. Bolt Tension Test
46. Magnetic Particle Test
47. Dye Penetration Test
48. Radiographic Test (2-man Crew)
49. Ultrasonic Test
50. X-ray Test
51. Welding Inspection

**D. Sprayed Fire Resistive Materials**

52. Thickness Test (ASTM E605)
53. Unit Weight Test (ASTM E605)
54. Adhesion/Cohesion (ASTM E736)

## E. Professional Services

1. Principal Engineer
2. Registered Engineer
3. Registered Threshold Inspector
4. Project Engineer
5. Staff Engineer
6. AWS-CWI Inspector
7. Registered Roof Consultants
8. Senior Engineering Technician
9. Engineering Technician (Asphalt Plant CTQP Certified)
10. Engineering Technician (Drilled Shaft CTQP Certified)
11. Engineering Technician (ACI/CTQP Certified)

- End of Section -

EXHIBIT B

**BILLING RATES FOR TASK ORDERS**

Engineering Testing Laboratory Services



**CITY OF FORT LAUDERDALE CONTRACT  
NODARSE & ASSOCIATES, INC. – PROPOSED CONTRACT RATES**

**A. Geotechnical Engineering & Construction Materials Testing**

1. Drill Rig & Crew Mobilization/Demobilization	
Truck Mounted Rig	\$ 250.00/Each
Mudbug	\$ 350.00/Each
Barge (Tidal)	\$ 2,500.00/Day
Barge (Non-Tidal)	\$ 1,000.00/Day
Amphibious	\$ 5,000.00/Each
2. Standard Penetration Test & Split-Barrel Sampling of Soils (ASTM D1556)	
0 to 50 Feet	\$ 11.00/L.F.
50 to 100 Feet	\$ 13.00/L.F.
100 to 150 Feet	\$ 15.00/L.F.
2a. Casing Allowance (3-Inch)	
0 to 50 Feet	\$ 6.50/L.F.
50 to 100 Feet	\$ 7.00/L.F.
100 to 150 Feet	\$ 7.50/L.F.
2b. Casing Allowance (6-Inch)	
0 to 50 Feet	\$ 9.00/L.F.
50 to 100 Feet	\$ 12.00/L.F.
100 to 150 Feet	\$ 12.00/L.F.
3. Soil Investigation & Sampling by Auger Boring (ASTM D1452)	
0 to 50 Feet	\$ 8.00/L.F.
50 to 100 Feet	\$ 10.00/L.F.
4. Thin-Wall (Shelby Tube) Sampling of Soils (ASTM D1587)	\$ 125.00/Each
5. Rock Core Drilling & Sampling (ASTM D2113) (4-Inch)	
0 to 50 Feet	\$ 50.00/L.F.
50 to 100 Feet	\$ 55.00/L.F.
100 to 150 Feet	\$ 60.00/L.F.

Engineering Testing Laboratory Services

6.	Grout to Seal Borehole (3-Inch)		
	0 to 50 Feet	\$	4.00/L.F.
	50 to 100 Feet	\$	5.00/L.F.
	100 to 150 Feet	\$	7.00/L.F.
	150 to 200 Feet	\$	9.00/L.F.
6a.	Grout to Seal Borehole (6-Inch)		
	0 to 50 Feet	\$	8.00/L.F.
	50 to 100 Feet	\$	10.00/L.F.
	100 to 150 Feet	\$	14.00/L.F.
	150 to 200 Feet	\$	18.00/L.F.
7.	Piezometer (Temporary Monitoring Well) Installation (Land)		
	0 to 50 Feet	\$	15.00/L.F.
	50 to 100 Feet	\$	17.50/L.F.
8.	Laboratory Density-Moisture Relations of Soils		
	Standard Proctor (ASTM D698) AASHTO T-99	\$	80.00/Test
	Modified Proctor (ASTM D1557) AASHTO T-180	\$	80.00/Test
9.	Field Density Determination of Soils Using Nuclear Gauge Method (ASTM D2922) (Min. of 3 Tests Per Trip)	\$	25.00/Test
10.	Density of Soils by Drive-Cylinder Method (ASTM D2937)	\$	25.00/Test
11.	Density of Soils by Sleeve Method (ASTM D4564)	\$	25.00/Test
12.	Limerock Bearing Ratio Test (FM-5-515)	\$	250.00/Test
13.	Limerock Analysis Test, Including Carbonates of Calcium & Magnesium, Oxides of Iron & Aluminum	\$	70.00/Test
14.	Laboratory California Bearing Ratio, CBR (ASTM D1883)	\$	250.00/Test
15.	In-Place California Bearing Ratio, CBR (ASTM D4429)	\$	550.00/Test
16.	Dynamic Core Electrometer (Penetrometer) (ASTM D6951)	\$	55.00/Hour
17.	Soil Visual Classifications Test (ASTM D2488)	\$	65.00/Test
18.	Moisture Content Determination of Soils (ASTM D2216)	\$	10.00/Test
19.	Atterberg Limits of Soils (ASTM D424)	\$	70.00/Test
20.	Organic Content Determination of Soils (ASTM D2974)	\$	30.00/Test
21.	Soils Particle Size Distribution (ASTM D6913)	\$	50.00/Test

Engineering Testing Laboratory Services

22. Hydraulic Conductivity of Soils-Constant Head Method (ASTM D2434)	\$ 200.00/Test
23. Hydraulic Conductivity of Soils Using Flexible Wall Membrane (ASTM D5084)	
Cohesive Soils	\$ 400.00/Test
Granular Soils	\$ 250.00/Test
24. Field Hydraulic Conductivity Test of Soils (Percolation-Exfiltration) Using South Florida Water Management-Constant Head (Method)	\$ 300.00/Test
25. Field Hydraulic Conductivity Test of Soils Using Double Ring Infiltration Method (ASTM D3385)	\$ 350.00/Test
26. Soil Resistivity Test	
i. Laboratory Method (ASTM G187)	\$ 45.00/Test
ii. Field method (ASTM G57)	\$ 55.00/Hour
27. Fresh Concrete Sampling & Testing	
i. Slump Test (ASTM C143)	\$ 10.00/Test
ii. Air Content (ASTM C173 or C231)	\$ 15.00/Test
28. Casting and Compressive Strength Determination of Concrete Cylinders (ASTM C39) (Set of 4 Cylinders)	\$ 80.00/Set
29. Flexural Strength of Concrete Beam (ASTM C78)	\$ 90.00/Each
30. Casting and Compressive Strength Determination of Cube Specimens (ASTM C109) (Set of 3 Cubes)	\$ 75.00/Set
31. Concrete Coring and Compressive Strength Determination (ASTM C42)	\$ 150.00/Hour
32. Compressive Strength Determination of In-Place Concrete Using Rebound Hammer (ASTM C805)	
i. In-Place Testing	\$ 55.00/Hour
33. Compressive Strength Determination of In-Place Concrete Using Windsor Probe (ASTM C803)	
i. In-Place Testing	\$ 55.00/Hour
34. Asphalt Coring and Sampling	
i. Coring Equipment Mobilization	\$ 175.00/Mob.
ii. Coring	\$ 55.00/Hour
iii. Density and Thickness Testing	\$ 55.00/Core

Engineering Testing Laboratory Services

35. Bulk Specific Gravity & Density Determination of Compacted Asphalt Cores (ASTM D2726)	\$ 80.00/Core
36. Maximum Theoretical Density Determination (ASTM D2041)	\$ 55.00/Core
37. Asphalt Extraction Test (ASTM D2172)	\$ 50.00/Each
38. Field Density Determination of Asphalt Using Nuclear Gauge Method (ASTM D2950) (Min. of 4 Tests Per Trip)	\$ 25.00/Test

**B. Field Quality Control/Quality Assurance**

39. Pile Driving Analyzer (PDA)	
i Mobilization	\$ 300.00/Each
ii PDA Equipment	\$ 550.00/Day
iii Testing (Project Engineer)	\$ 100.00/Hour
40. Pile Integrity Testing (PIT)	
i Mobilization	\$ 200.00/Each
ii PIT Equipment	\$ 200.00/Day
iii Testing (Project Engineer)	\$ 100.00/Hour
41. Drilled Shaft Installation Inspection (CTQP Requirements)	\$ 55.00/Hour
42. Auger-Cast Pile Inspection	\$ 55.00/Hour
43. Crosshole Sonic Logging (CSL) of Drilled Shafts	\$ 350.00/Day

**C. Structural Testing**

44. Welding Inspection	\$ 80.00/Hour
45. Bold Tension Test	\$ 80.00/Hour
46. Magnetic Particle Test	\$ 75.00/Hour
47. Dye Penetration Test	\$ 75.00/Hour
48. Radiographic Test (2-Man Crew)	\$ 200.00/Hour
49. Ultrasonic Test	\$ 80.00/Hour
50. X-ray Test	\$ 80.00/Hour

Engineering Testing Laboratory Services

51. Welding Inspection	\$ 80.00/Hour
<b>D. <u>Sprayed Fire Resistive Materials</u></b>	
52. Thickness Test (ASTM E605)	\$ 65.00/Hour
53. Unit Weight Test (ASTM E605)	\$ 65.00/Hour
54. Adhesion/Cohesion (ASTM E736)	\$ 55.00/Hour
<b>E. <u>Professional Services</u></b>	
1. Principal Engineer	\$ 120.00/Hour
2. Registered Engineer	\$ 100.00/Hour
3. Registered Threshold Inspector	\$ 95.00/Hour
4. Project Engineer	\$ 100.00/Hour
5. Staff Engineer	\$ 75.00/Hour
6. AWS-CWI Inspector	\$ 75.00/Hour
7. Registered Roof Consultants (Please See Attached Rates From Our Subconsultant)	/Hour
8. Senior Engineering Technician	\$ 55.00/Hour
9. Engineering Technician (Asphalt Plant CTQP Certified)	\$ 55.00/Hour
10. Engineering Technician (Drilled Shaft CTQP Certified)	\$ 55.00/Hour
11. Engineering Technician (ACI/CTQP Certified)	\$ 40.00/Hour

Engineering Testing Laboratory Services

**40. ACES Consulting Engineers (Subconsultant)**

a.	Uplift Test TAS 124-95	
	Vacuum Chamber (Min. 4 Test Per Job)	\$ 450.00/Test
	Bond Test (Min. 4 Test Per Job)	\$ 500.00/Test
b.	Moisture Survey TAS 126-95	
	Electrical Capacitance	\$ 0.02/Per Sq. Ft.
	Minimum Fee Per Job	\$1,000.00
3.	Roof Cores For Moisture and Material Determination (Min. 4 Cores Per Job) (Roof Patches To Be Performed By Others Than Advance Consulting Engineering Services, Inc.)	\$ 100.00/Per Core
4.	Pull Out Test On Roof Fasteners TAS 105-98	\$ 20.00/Per Pull
	Minimum Fee Per Job (Roof Patches To Be Performed By Others Than Advance Consulting Engineering Services, Inc.)	\$1,000.00
5.	Visual Inspections	
	Minimum Per Job	\$1,500.00
	Per Square Foot	\$ 0.25/Sq. Ft.
6.	Peel Test On Caulking ASTM C1193 Appendix X	\$ 100.00/Test
	Minimum Fee Per Job (Access and Patches To Be Provided By Others)	\$1,000.00
7.	Window and Doors Water Tests ASTM E1105, AAMA 511-08 and 501.02-03	\$3,000.00/Per Test
8.	Roof Consultant	\$ 105.00/Hour
9.	Project Manager	\$ 90.00/Hour
10.	Sr. Technician RRO	\$ 80.00/Hour