

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this **18th day of February, 2004**, by and between the City of Naples, Florida, a municipal corporation, (hereinafter referred to as the "OWNER") and **MACTEC Engineering and Consulting, Inc., a Florida corporation, authorized to do business in the State of Florida, whose business address is 3627 Progress Avenue, Naples, FL 34104** (hereinafter referred to as the "CONSULTANT").

WITNESSETH:

WHEREAS, the OWNER desires to obtain the professional engineering services of the CONSULTANT **concerning soil screening, soil sampling, ground water sampling, laboratory analytical services, and reporting for the proposed Pulling Landing Park**, (hereinafter referred to as the "Project"), said services being more fully described in Exhibit A, "Scope of Services", which is attached hereto and incorporated herein; and

WHEREAS, the CONSULTANT has submitted a proposal for provision of those services; and

WHEREAS, the CONSULTANT represents that it has expertise in the type of professional services that will be required for the Project.

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

ARTICLE ONE CONSULTANT'S RESPONSIBILITY

1.1. CONSULTANT shall provide to OWNER professional engineering services in all phases of the Project to which this Agreement applies.

1.2. The Basic Services to be performed by CONSULTANT hereunder are set forth in the Scope of Services described in detail in Exhibit A. The total compensation to be paid CONSULTANT by the OWNER for all Basic Services is set forth in Article Five and Exhibit B, "Basis of Compensation", which is attached hereto and incorporated herein.

1.3. The CONSULTANT agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, the City of Naples, and in Collier County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the CONSULTANT pursuant to this Agreement.

1.4. The CONSULTANT agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified personnel to provide such services.

1.5. CONSULTANT agrees to employ and designate, in writing, within five (5) calendar days after receiving its Notice to Proceed, a qualified licensed professional to serve as the CONSULTANT's project

manager (hereinafter referred to as the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement. Within five (5) calendar days from the Notice to Proceed issued by the OWNER to the CONSULTANT, the CONSULTANT shall deliver to the OWNER a written statement, executed by the proper officers of the CONSULTANT, acknowledging that the Project Manager shall have full authority to bind and obligate the CONSULTANT on all matters arising out of or relating to this Agreement. The CONSULTANT agrees that the Project Manager shall devote whatever time is required to satisfactorily manage the services to be provided and performed by the CONSULTANT hereunder. The person selected by the CONSULTANT to serve as the Project Manager shall be subject to the prior approval and acceptance of the OWNER.

1.6. CONSULTANT agrees, within fourteen (14) calendar days of receipt of a written request from the OWNER, to promptly remove and replace the Project Manager, or any other personnel employed or retained by the CONSULTANT, or any subconsultants or subcontractors or any personnel of any such subconsultants or subcontractors engaged by the CONSULTANT to provide and perform services or work pursuant to the requirements of this Agreement, whom the OWNER shall request in writing to be removed, which request may be made by the OWNER with or without cause.

1.7. The CONSULTANT has represented to the OWNER that it has expertise in the type of professional services that will be required for the Project. The CONSULTANT agrees that all services to be provided by CONSULTANT pursuant to this Agreement shall be subject to the OWNER's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by CONSULTANT hereunder. In the event of any conflicts in these requirements, the CONSULTANT shall notify the OWNER of such conflict and utilize its best professional judgment to advise OWNER regarding resolution of the conflict.

1.8. CONSULTANT agrees not to divulge, furnish or make available to any third person, firm or organization, without OWNER's prior written consent, or unless incident to the proper performance of the 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 hereunder, and CONSULTANT shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph.

1.9. CONSULTANT agrees to certify all estimates of construction costs and Project completion dates prepared by the CONSULTANT. Said certifications shall be in a form approved by the OWNER.

1.10. Evaluations of the OWNER'S Project budget, preliminary estimates of construction cost and detailed estimates of construction cost prepared by the CONSULTANT represent the CONSULTANT'S best judgment as a design professional familiar with the construction industry. The CONSULTANT cannot and does not guarantee that bids or negotiated prices will not vary from any estimate of construction cost or evaluation prepared or agreed to by the CONSULTANT. Notwithstanding anything above to the contrary, CONSULTANT shall revise and modify Construction Documents and assist in the rebidding of the Work at no additional cost to OWNER, if all responsive and responsible bids exceed the estimates of construction costs prepared by CONSULTANT.

1.11. CONSULTANT shall not be responsible for means, methods, techniques, sequences or procedures of construction selected by contractors or the safety precautions and programs incident to the work of contractors.

1.12 CONSULTANT agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of OWNER who in any way deals with, coordinates on, or assists with, the professional services provided in this Agreement, for a period of two (2) years after termination of all provisions of this Agreement.

- (a) For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council.
- (b) For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director.
- (c) In the event CONSULTANT violates the provisions of this paragraph, CONSULTANT shall be required to pay damages to OWNER in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of OWNER from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last two (2) years of gross compensation from OWNER, whichever is greater.

1.13 CONSULTANT agrees not to provide services for compensation to any other party other than OWNER on the same subject matter, same project, or scope of services as set forth in this Agreement without approval from the City Council of OWNER.

1.14 Except as otherwise provided herein, CONSULTANT agrees not to disclose or use any information not available to members of the general public and gained by reason of CONSULTANT'S contractual relationship with OWNER for the special gain or benefit of CONSULTANT or for the special gain or benefit of any other person or entity.

ARTICLE TWO ADDITIONAL SERVICES OF CONSULTANT

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others Additional Services of the types listed in Article Two herein. These services will be paid for by OWNER as indicated in Article Five and Exhibit B. The following services, if not otherwise specified in Exhibit A as part of Basic Services, shall be Additional Services:

2.1. Preparation of applications and supporting documents (except those already to be furnished under this Agreement) for private or governmental grants, loans, bond issues or advances in connection with the

Project.

2.2. Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to and not reasonably anticipated prior to the preparation of such studies, reports or documents, or are due to any other causes beyond CONSULTANT's control.

2.3. Preparation and submission of information to and necessary consultations with Collier County, Florida Department of Environmental Protection, Florida Department of Transportation, South Florida Water Management District, U.S. Army Corps of Engineers or other appropriate regulatory agencies, in order to obtain necessary permits or approvals for construction of the Project, unless such permits are expressly included in Basic Services to be performed by CONSULTANT hereunder as set forth in the Exhibit A Scope of Services.

2.4. Providing renderings or models for OWNER's use.

2.5. Investigations and studies involving detailed consideration of operations, maintenance and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; and evaluating processes available for licensing and assisting OWNER in obtaining process licensing.

2.6. Furnishing services of independent professional associates and consultants for other than the contract services to be provided by CONSULTANT hereunder.

2.7. Services during out-of-town travel required of CONSULTANT and directed by OWNER, other than visits to the Project site or OWNER's office.

2.8. Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services, except as otherwise provided for herein.

2.9. Providing any type of property surveys, aerial photography or related engineering services needed for the transfer of interests in real property and field surveys for design purposes and engineering surveys and staking to enable contractors to proceed with their work and providing other special field surveys.

2.10. Preparation of operating, maintenance and staffing manuals, except as otherwise provided for herein.

2.11. Preparing to serve or serving as a CONSULTANT or witness for OWNER in any litigation, or other legal or administrative proceeding, involving the Project (except for assistance in consultations which are included as part of the Basic Services to be provided herein).

2.12. Additional services rendered by CONSULTANTS in connection with the Project, not otherwise provided for in this Agreement or not customarily furnished in accordance with generally accepted engineering practice.

ARTICLE THREE OWNER'S RESPONSIBILITIES

3.1. The Owner shall designate in writing a project coordinator to act as OWNER's representative with respect to the services to be rendered under this Agreement (hereinafter referred to as the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to CONSULTANT's services for the Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to the CONSULTANT that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- (a) The scope of services to be provided and performed by the CONSULTANT hereunder;
- (b) The time the CONSULTANT is obligated to commence and complete all such services;
or
- (c) The amount of compensation the OWNER is obligated or committed to pay the CONSULTANT.

3.2. The Project Coordinator shall:

(a) Review and make appropriate recommendations on all requests submitted by the CONSULTANT for payment for services and work provided and performed in accordance with this Agreement;

(b) Provide all criteria and information requested by CONSULTANT as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations;

(c) Upon request from CONSULTANT, assist CONSULTANT by placing at CONSULTANT's disposal all available information in the OWNER'S possession pertinent to the Project, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data relative to design or construction of the Project

(d) Arrange for access to and make all provisions for CONSULTANT to enter the Project site to perform the services to be provided by CONSULTANT under this Agreement; and

(e) Provide notice to CONSULTANT of any deficiencies or defects discovered by the OWNER with respect to the services to be rendered by CONSULTANT hereunder.

3.3. CONSULTANT acknowledges that access to the Project Site, to be arranged by OWNER for CONSULTANT, may be provided during times that are not the normal business hours of the CONSULTANT.

3.4. OWNER shall be responsible for the acquisition of all easements, property sites, rights-of-way, or other property rights required for the Project and for the costs thereof, including the costs of any required land surveys in connection with such acquisition.

ARTICLE FOUR TIME

4.1. Services to be rendered by CONSULTANT shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from OWNER for all or any designated portion of the Project and shall be performed and completed **by April 30, 2004** in accordance with the Project Schedule attached hereto and made a part hereof as Exhibit C. Time is of the essence with respect to the performance of this Agreement.

4.2. Should CONSULTANT be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of CONSULTANT, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of the OWNER, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then CONSULTANT shall notify OWNER in writing within five (5) working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which CONSULTANT may have had to request a time extension.

4.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of CONSULTANT's services from any cause whatsoever, including those for which OWNER may be responsible in whole or in part, shall relieve CONSULTANT of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONSULTANT's sole remedy against OWNER will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Provided, however, if through no fault or neglect of the CONSULTANT, the services to be provided hereunder have not been completed by the date agreed upon in 4.1 above, the CONSULTANT's compensation may be equitably adjusted, with respect to those services that have not yet been performed, to reflect the incremental increase in costs experienced by CONSULTANT after stated deadline in 4.1 above.

4.4. Should the CONSULTANT fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the OWNER hereunder, the OWNER at its sole discretion and option may withhold any and all payments due and owing to the CONSULTANT until such time as the CONSULTANT resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the OWNER's satisfaction that the CONSULTANT's performance is or will shortly be back on schedule.

ARTICLE FIVE COMPENSATION

5.1. Compensation and the manner of payment of such compensation by the OWNER for services rendered hereunder by CONSULTANT shall be **an amount not to exceed \$18,700**, as prescribed in Exhibit B, entitled "Basis of Compensation", which is attached hereto and made a part hereof.

ARTICLE SIX OWNERSHIP OF DOCUMENTS

6.1. Upon completion or termination of this Agreement, all records, documents, tracings, plans,

specifications, maps, evaluations, reports, computer assisted design or drafting disks and other technical data, other than working papers, prepared or developed by CONSULTANT under this Agreement shall be delivered to and become the property of OWNER. CONSULTANT, at its own expense, may retain copies for its files and internal use. OWNER agrees to indemnify and hold harmless CONSULTANT with respect to any claim, loss or damage, including attorneys fees incurred by CONSULTANT due to the OWNER's use of said records, documents, tracings, plans, specifications, maps, evaluations, reports, computer disks and other technical data on some other project unless such use is authorized by CONSULTANT.

6.2. With respect to and in consideration for the indemnification provided by OWNER in paragraphs 6.1. above, CONSULTANT agrees to pay to OWNER \$10.00, the sufficiency and receipt of which is acknowledged through the signing of this Agreement.

ARTICLE SEVEN MAINTENANCE OF RECORDS

7.1. CONSULTANT will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by CONSULTANT for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. OWNER, or any duly authorized agents or representatives of OWNER, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

ARTICLE EIGHT INDEMNIFICATION

8.1. The CONSULTANT (or Design Professional) agrees to indemnify and hold harmless the City, and 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 intentionally wrongful conduct of the Consultant and other persons employed or utilized by Consultant in the performance of the contract.

8.2. CONSULTANT acknowledges that the general conditions of any contract shall include language, satisfactory to the OWNER's attorney, in which the contractor agrees to hold harmless and to defend OWNER, its agents and employees from all suits and actions, including attorney's fees, and all costs of litigation and judgments of any name and description arising out of or incidental to the performance of the construction contract or work performed thereunder.

ARTICLE NINE INSURANCE

9.1. CONSULTANT shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in EXHIBIT D to this Agreement.

**ARTICLE TEN
SERVICES BY CONSULTANT'S OWN STAFF**

10.1. The services to be performed hereunder shall be performed by CONSULTANT's own staff, unless otherwise authorized in writing by the OWNER. The employment of, contract with, or use of the services of any other person or firm by CONSULTANT, as independent consultant or otherwise, shall be subject to the prior written approval of the OWNER. No provision of this Agreement shall, however, be construed as constituting an agreement between the OWNER and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against the OWNER beyond such as may otherwise exist without regard to this Agreement.

**ARTICLE ELEVEN
WAIVER OF CLAIMS**

11.1. CONSULTANT's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against OWNER arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by CONSULTANT as unsettled at the time of the final payment. Neither the acceptance of CONSULTANT's services nor payment by OWNER shall be deemed to be a waiver of any of OWNER's rights against CONSULTANT.

**ARTICLE TWELVE
TERMINATION OR SUSPENSION**

12.1. CONSULTANT shall be considered in material default of this Agreement and such default will be considered cause for OWNER to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by OWNER, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by CONSULTANT or by any of CONSULTANT's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. The OWNER may so terminate this Agreement, in whole or in part, by giving the CONSULTANT seven (7) calendar days written notice.

12.2. If, after notice of termination of this Agreement as provided for in paragraph 12.1 above, it is determined for any reason that CONSULTANT was not in default, or that its default was excusable, or that OWNER otherwise was not entitled to the remedy against CONSULTANT provided for in paragraph 12.1, then the notice of termination given pursuant to paragraph 12.1 shall be deemed to be the notice of termination provided for in paragraph 12.3 below and CONSULTANT's remedies against OWNER shall be the same as and limited to those afforded CONSULTANT under paragraph 12.3 below.

12.3. OWNER shall have the right to terminate this Agreement, in whole or in part, without cause upon seven (7) calendar day's written notice to CONSULTANT. In the event of such termination for convenience, CONSULTANT's recovery against OWNER shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by CONSULTANT that are directly attributable to the termination, but CONSULTANT shall not

be entitled to any other or further recovery against OWNER, including, but not limited to, anticipated fees or profits on work not required to be performed.

12.4. Upon termination, the CONSULTANT shall deliver to the OWNER all original papers, records, documents, drawings, models, and other material set forth and described in this Agreement.

12.5. The OWNER shall have the power to suspend all or any portions of the services to be provided by CONSULTANT hereunder upon giving CONSULTANT two (2) calendar days prior written notice of such suspension. If all or any portion of the services to be rendered hereunder are so suspended, the CONSULTANT's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in Article Four herein.

ARTICLE THIRTEEN TRUTH IN NEGOTIATION REPRESENTATIONS

13.1. CONSULTANT warrants that CONSULTANT 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 CONSULTANT 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 any other consideration contingent upon or resulting from the award or making of this Agreement.

13.2. In accordance with provisions of Section 287.055, (5)(a), Florida Statutes, the CONSULTANT agrees to execute the required Truth-In-Negotiation Certificate, attached hereto and incorporated herein as Exhibit E, stating that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of the Agreement. The CONSULTANT agrees that the original Agreement price and any additions thereto shall be adjusted to exclude any significant sums by which the OWNER determines the Agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such adjustments shall be made within one (1) year following the end of this Agreement.

ARTICLE FOURTEEN CONFLICT OF INTEREST

14.1. 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. CONSULTANT further represents that no persons having any such interest shall be employed to perform those services.

ARTICLE FIFTEEN MODIFICATION

15.1. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

**ARTICLE SIXTEEN
NOTICES AND ADDRESS OF RECORD**

16.1. All notices required or made pursuant to this Agreement to be given by the CONSULTANT to the OWNER shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following

OWNER's address of record:
City Council
City of Naples
735 Eighth Street South
Naples, FL 34102-3796
Attention: Dr. Robert E. Lee, City Manager

16.2. All notices required or made pursuant to this Agreement to be given by the OWNER to the CONSULTANT shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CONSULTANT's address of record:

CONSULTANT's address of record:
MACTEC Engineering and Consulting, Inc.
3627 Progress Avenue
Naples, FL 34104
Attention: Jo C. Tucker, Principal

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

**ARTICLE SEVENTEEN
MISCELLANEOUS**

17.1. CONSULTANT, in representing OWNER, shall promote the best interest of OWNER and assume towards OWNER a duty of the highest trust, confidence, and fair dealing.

17.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

17.3. This Agreement is not assignable, in whole or in part, by CONSULTANT without the prior written consent of OWNER.

17.4. 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.

17.5. The headings of the Articles, Exhibits, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Exhibits, Parts and Attachments.

17.6. This Agreement, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

**ARTICLE EIGHTEEN
APPLICABLE LAW**

18.1. Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate Florida state court in Collier County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Professional Services Agreement for the day and year first written above.

ATTEST:

OWNER:
CITY OF NAPLES, FLORIDA,
A MUNICIPAL CORPORATION

By: _____
City Clerk

By: _____
Dr. Robert E. Lee, City Manager

Approved as to form and
legal sufficiency:

Robert D. Pritt, City Attorney

CONSULTANT:
MACTEC Engineering and Consulting, Inc.
A Florida Corporation

By:
Printed Name
Title:

(CORPORATE SEAL)

witness

Consultant Services Agreement
115798_1.WP5
Revised 7/8/03

**EXHIBIT A
SCOPE OF SERVICES**

Exhibit A consists of the following component Parts:

- A.1. DESCRIPTION OF PROJECT
- A.2. DESIGN REPORT
- A.3. PRELIMINARY DESIGN
- A.4. FINAL DESIGN
- A.5. CONSTRUCTION BID SERVICES
- A.6. CONSTRUCTION CONTRACT ADMINISTRATION
- A.7. DETAILED OBSERVATION OF CONSTRUCTION

A.1. DESCRIPTION OF PROJECT.

Task 1:

MACTEC will excavate 10 to 12 test pits, distributed throughout the site, to observe and document the constituents of the landfilled materials. An Organic Vapor Analyzer (OVA) will be used on selected soil samples to provide an approximate measurement of methane and/or hydrocarbon vapors. The information obtained will be used to select locations for environmental sampling.

MACTEC will obtain 10 to 12 soil samples from the surface and near-surface soils. Samples will be selected for laboratory testing based on either visual evidence of contamination (for example, staining) or elevated OVA readings. The samples will be laboratory analyzed for total residual petroleum hydrocarbons (TRPH) and the eight RCRA metals (arsenic, barium, cadmium, chromium, lead, mercury, silver, and selenium).

The test pit information will also be used to provide a brief evaluation of geotechnical considerations related to development of parking lots and small structures (e.g., gazebos).

Task 2:

MACTEC will collect four ground water samples using a geoprobe direct push unit. The sample locations will be distributed throughout the site, unless the soil sampling results indicate contaminants of concern at certain locations. The samples will be laboratory analyzed for the Priority Pollutants.

A written report which describes the field sampling and provides our evaluation and test results will be prepared after reviewing the project information provided to us and analyzing the information collected for the project. It should be noted that the scope of this proposal is intended to identify in a general way whether contaminants are present, and it is possible that additional assessment will be necessary to delineate the boundaries of contaminated areas that may be found. Actual remedial design and/or meeting regulatory agency requirements for Contamination Assessment Reports, if any are required, are also beyond this scope.

Surveying to determine accurate horizontal and vertical locations of any tests, borings, or well installation locations is beyond the scope of this work. Field tests or boring locations described in MACTEC's report or shown on sketches are based on information furnished by others or estimates made in the field by MACTEC's personnel, and are approximations. MACTEC is not responsible for damage or loss due to undisclosed or unknown surface or subsurface conditions on the property.

END OF EXHIBIT A

EXHIBIT B
BASIS OF COMPENSATION

B.1.1. As consideration for providing Basic Services as set forth herein in Exhibit A, OWNER agrees to pay, and CONSULTANT agrees to accept, the lump sum fees as shown on Attachment A entitled "Schedule Fees for Basic Services".

B.1.2. Payment For Basic Services under Exhibit A shall be paid on a lump sum basis in accordance with set milestones as follows:

- (a) the A.2 milestone shall be the submittal to OWNER of the Design Report and CONSULTANT'S initial professional opinions of probable total Project and construction costs.
- (b) the A.3 milestone shall be the submittal to OWNER of the preliminary Contract Documents and CONSULTANT'S preliminary opinions of probable total Project and construction costs.
- (c) the A.4 milestone shall be the submittal to the OWNER of the final Contract Documents after OWNER'S approval of detailed opinions of probable total Project and construction costs.
- (d) the A.5 milestone shall be the award of bids by OWNER.
- (e) the A.6 milestone shall be the close-out of construction contract, final inspection and submittal of record drawings and final report of variations from the construction Contract Documents.

B.2.1. As consideration for providing Basic Services under Part A.7 entitled "Detailed Observation of Construction" and for properly approved Additional Services set forth in Article Two of this Agreement as estimated on Attachment C entitled "Consultant's Estimate of Additional Services", OWNER agrees to pay and CONSULTANT agrees to accept payment on a time and reimbursable cost basis. Payments for Part A.7 services and properly approved Additional Services shall be made monthly on a time and reimbursable cost basis computed in accordance with either Attachment B entitled "Consultant's Employee Hourly Rate Schedule" for employees working under this Agreement or Attachment C entitled "Consultant's Estimate of Additional Services". Payment shall be made monthly on an as needed basis, not to exceed 40 hours per person per week. Payment for services performed by individuals beyond 40 hours per week or Saturdays, Sundays or holidays, shall be increased by a factor of 1.5 applied to Attachment B provided such overtime work is approved by OWNER in advance whenever possible and not due to CONSULTANT'S own fault or neglect.

B.2.2. Reimbursable costs shall mean the actual expenditures made by the CONSULTANT while providing Basic Services under Part A.7 or Additional Services, in the interest of the Project, listed in the following sub-paragraphs:

- (a) expenses for transportation and subsistence incidental to out-of-town travel required by CONSULTANT and directed by OWNER, other than visits to the Project Site or OWNER's office;
- (b) expenses for preparation, reproduction, photographic production techniques, postage and handling of drawings, specifications, bidding documents and similar Project-related items in addition to those otherwise required in Parts A.2, A.3, A.4, A.5 and A.6 of Basic Services;
- (c) when authorized in advance by OWNER, except as specifically otherwise provided herein, the expense of overtime work requiring higher than regular rates; and
- (d) expenses for renderings, models and mock-ups requested by OWNER.

B.2.3. By way of example and not limitation, reimbursable costs shall specifically not include expenditures, except as otherwise described in paragraph B.2.2, such as:

- (a) expenses for transportation and subsistence;
- (b) overhead, including field office facilities;
- (c) overtime not authorized by OWNER; or
- (d) expenses for copies, reproductions, postage, handling, express delivery, and long distance communications.

B.3.1. In no case shall the lump sum figures on Attachment A be exceeded without a change in the scope of the project being approved by the City Council for the City of Naples.

B.3.2. Detailed Construction Observation work performed under Part A.7. and Additional Services, shall be paid as substantiated to the limits shown in Attachment C, but not to exceed the sum of those figures without execution of an appropriate Agreement amendment.

B.3.3. Payments will be made for services rendered, no more than on a monthly basis, within thirty (30) days of submittal of an approvable invoice. The number of the purchase order by which authority the services have been made, shall appear on all invoices. All invoices shall be reasonably substantiated, identify the services rendered and must be submitted in triplicate in a form and manner required by OWNER.

B.3.4. CONSULTANT acknowledges that Attachment A - Schedule of Fees for Basic Services, Attachment B - Consultant's Employee Hourly Rate Schedule, and Attachment C - Consultant's Estimate of Additional Services, each attached to this Exhibit B are incorporated herein and, will be the basis for OWNER's budgeting, authorizing and monitoring of expenditures under this Agreement.

B.3.5. As compensation for coordinating subconsultant activities for OWNER, CONSULTANT shall be allowed an administrative fee not to exceed ten percent (10%) of the actual cost of services rendered under Part A.7 and Additional Services. For the purposes of this provision the actual cost of services rendered shall not include any mark-up between the vendor who actually performed the services and any sub-consultant. No administrative fee or mark-up shall be paid in conjunction with the provision of Basic Services as set forth in Parts A.2, A.3, A.4, A.5 and A.6 of Exhibit A.

END OF EXHIBIT B.

EXHIBIT B - ATTACHMENT A
SCHEDULE OF FEES FOR BASIC SERVICES

Based upon our experience in the site vicinity, understanding of the proposed project, and the proposed scope of field testing, we have prepared the following fee estimate:

Labor, including field work and reporting.....	\$4,280 to \$6,100
Geoprobe.....	\$1,625 to \$2,450
Supplies and expense ⁽¹⁾	\$2,100 to \$2,500
Laboratory Fees	\$7,150 to \$7,650
Total Estimated Fee.....	\$15,155 to \$18,700

(1) Includes backhoe rental.

SCHEDULE OF FEES
ENVIRONMENTAL SERVICES

A. PROFESSIONAL PERSONNEL

Charges will be made at the following rates for engineers, scientists, etc. for time spent in administration, consultation or meetings related to the project, field inspection and evaluation, review and analysis of field and laboratory data, travel time, report preparation and review, etc. Preparation and time spent for expert testimony will be charged at 1.5 times the standard rates.

	<u>Rate Per Hour(s)</u>
STAFF Engineer/Geologist/Scientist/Architect.....	\$75.00
PROJECT Engineer/Geologist/Scientist/Architect, Project Manager.....	\$85.00
SENIOR Registered Engineer/Geologist/Scientist/Architect, Project Manager.....	\$95.00
PRINCIPAL Registered Engineer/Geologist/Scientist/Architect, Project Manager.....	\$130.00
CHIEF ENGINEER/SENIOR PRINCIPAL	\$150.00

B. SUPPORT PERSONNEL

Charges will be made at the following rates for time of basic support services spent in portal-to-portal travel, sampling, conducting field inspections, laboratory tests, drafting, project administration, and work processor services not otherwise charged on a unit test basis. Over eight hours per day, holidays, Saturdays and Sundays work will be charged at the standard rate times 1.50.

	<u>Rate Per Hour(s)</u> <u>(Regular Time)</u>
Environmental Technician I.....	\$40.00
Environmental Technician II.....	\$45.00
Environmental Technician III.....	\$55.00
Environmental Technician IV.....	\$60.00
Principal Technician.....	\$75.00
Word Processor.....	\$37.00
Draftsperson.....	\$50.00

C. EXPENSES

- 1) Direct non-salary expenses incurred and identified to the project and not applicable to general overhead will be invoiced at our cost divided by 0.8. Examples of direct expenses are project supplies, travel and lodging.
- 2) Company owned vehicles (e.g., pickup and vans) and personal automobiles used on project will be charged at a mileage rate of \$0.42 per mile, or \$30/day, whichever is greater.
- 3) Disposal of Hazardous Waste samples - Samples of waste will be disposed by permitted methods after a determination is made of the waste is defined by RCRA to be hazardous. Due to the requirements of some hazardous assessments, disposal and invoicing of incurred expenses may take place after invoicing of the originally contracted work. This cost, if incurred, is not included in the project budget or in the laboratory testing fee schedule.

D. SUBCONTRACTS

REVISED 7/18/02

- 1) Subcontract services outside the Law Companies (if required) will be invoiced at our cost multiplied by 1.15.
- 2) Subcontract services within the Law Companies (if required) will be invoiced with no mark-up.

EXHIBIT B - ATTACHMENT C
CONSULTANT'S ESTIMATE OF ADDITIONAL SERVICES

REVISED 7/18/02

EXHIBIT C
PROJECT SCHEDULE

Schedule

Based on our current schedule we can begin work on this project within 5 working days of receiving and accepting your written authorization. We anticipate our test pit and soil testing program will be completed approximately 2 working days following mobilization of equipment to the site, and the ground water sampling will be completed within 2 weeks of the soil testing. We estimate our written report will be available within 20 working days following the completion of field work.

EXHIBIT D
INSURANCE COVERAGE

(1) The amounts and types of insurance coverage shall conform to the following minimum requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents.

(2) The insurance required by this Agreement shall be written for not less than the limits specified herein or required by law, whichever is greater.

(3) Coverages shall be maintained without interruption from the date of commencement of the work until the date of completion and acceptance of the Project by the Owner or as specified in this Agreement, whichever is longer.

(4) Certificates of insurance (3 copies) acceptable to the Owner shall be filed with the Owner within ten (10) calendar days after Notice of Award is received by Contractor/Consultant/Professional. Such certificates shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner.

(5) All insurance coverages of the Contractor/Consultant/Professional shall be primary to any insurance or self insurance program carried by the Owner applicable to this Project.

(6) The acceptance by Owner of any Certificate of Insurance does not constitute approval or agreement by the Owner that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of this Agreement.

(7) Contractor/Consultant/Professional shall require each of its subcontractors to procure and maintain, until the completion of the subcontractor's work, insurance of the types and to the limits specified in this Section unless such insurance requirements for the subcontractor are expressly waived in writing by the Owner.

(8) Should at any time the Contractor/Consultant/Professional not maintain the insurance coverages required herein, the Owner may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the Contractor for such coverages purchased. The Owner shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the Owner to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

(9) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the Work or termination of the Agreement, the Consultant shall furnish to the City of Naples, in triplicate, renewal or replacement Certificate(s) of Insurance not later than thirty (30) calendar days prior to the date of their expiration. Failure of the Contractor to provide the City of Naples with such renewal certificate(s) shall be considered justification for the City of Naples to terminate the Agreement.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

Required by this Agreement? (check one) Yes No

(1) Workers' Compensation and Employers' Liability Insurance shall be maintained by the Contractor/Consultant/Professional during the term of this Agreement for all employees engaged in the work under this Agreement in accordance with the laws of the State of Florida. The amounts of such insurance shall not be less than:

- a. Worker's Compensation - Florida Statutory Requirements
- b. Employers' Liability (check one)

\$100,000 Each Accident
\$500,000 Disease Aggregate
\$100,000 Disease Each Employee

\$1,000,000 Each Accident
\$1,000,000 Disease Aggregate
\$1,000,000 Disease Each Employee

(2) The insurance company shall waive its Rights of Subrogation against the Owner and the policy shall be so endorsed.

(3) United States Longshoreman's and Harborworker's Act coverage shall be maintained where applicable to the completion of the work. (check one)

Applicable Not Applicable

(4) Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. (check one)

Applicable Not Applicable

COMMERCIAL GENERAL LIABILITY

Required by this Agreement? (check one) Yes No

(1) Commercial General Liability Insurance shall be maintained by the Contractor/Consultant/Professional. Coverage will include, but not be limited to, Bodily Injury, Property Damage, Personal Injury, Contractual Liability for this Agreement, Independent Contractors, Broad Form Property Damage including Completed Operations and Products and Completed Operations Coverage. Products and Completed Operations coverage shall be maintained for a period of not less than five (5) years following the completion and acceptance by the Owner of the work under this Agreement. Limits of Liability shall not be less than the following: (check one)

<input type="checkbox"/> General Aggregate	\$300,000	
Products/Completed Operations Aggregate		\$300,000
Personal and Advertising Injury	\$300,000	
Each Occurrence	\$300,000	
Fire Damage	\$ 50,000	
<input type="checkbox"/> General Aggregate	\$500,000	
Products/Completed Operations Aggregate		\$500,000
Personal and Advertising Injury	\$500,000	
Each Occurrence	\$500,000	
Fire Damage	\$ 50,000	
<input checked="" type="checkbox"/> General Aggregate	\$1,000,000	
Products/Completed Operations Aggregate		\$1,000,000
Personal and Advertising Injury	\$1,000,000	
Each Occurrence	\$1,000,000	
Fire Damage	\$ 50,000	

(2) The General Aggregate Limit shall apply separately to this Project and the policy shall be endorsed using the following endorsement wording. "This endorsement modifies insurance provided under the following: Commercial General Liability Coverage Part. The General Aggregate Limit under LIMITS OF INSURANCE applies separately to each of your projects away from premises owned by or rented to you."

(3) If the General Liability insurance required herein is issued or renewed on a "claims made" basis, as opposed to the "occurrence" form, the retroactive date for coverage shall be no later than the commencement date of the Project and shall provide that in the event of cancellation or non-renewal the Extended Reporting Period (Discovery Period) for claims shall be no less than three (3) years.

(4) The Owner shall be named as an Additional Insured and the policy shall be endorsed that such coverage shall be primary to any similar coverage carried by the Owner.

(5) Coverage shall be included for explosion, collapse or underground property damage claims.

(6) Watercraft Liability coverage shall be carried at the limits shown above if applicable to the completion of the work under this Agreement. (check one)

Applicable Not Applicable

(7) Aircraft Liability coverage shall be carried at limits of \$2,000,000 each occurrence if applicable to the completion of the work under this Agreement. (check one)

Applicable Not Applicable

PROPERTY INSURANCE - BUILDERS RISK

(1) Property Insurance - Builders Risk coverage shall be carried by the Owner if applicable. (check one)

Applicable Not Applicable

(2) The Owner shall purchase and maintain in a company or companies lawfully authorized to do business in the State of Florida, in the City of Naples, and in Collier County, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors, Sub-subcontractors and Material Suppliers in the Work.

(3) Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, wind and hail, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and, at the Owner's

option, shall cover reasonable compensation for Professional's services and expenses required as a result of such insured loss. At the Owner's option, flood insurance will also be purchased.

(4) The property insurance provided by the Owner requires minimum deductibles and the Contractor shall pay costs not covered by the deductibles. The responsibility of the Contractor for any deductible associated with the all-risk policy described above shall be limited to a maximum of \$1,000 for each occurrence unless higher deductibles are identified in Exhibit C of the Contract Documents. The responsibility of the Contractor for any deductible associated with the flood insurance identified herein, if purchased by the Owner, shall be limited to a maximum of \$1,000 for each occurrence unless higher deductibles are identified in Exhibit C of the Contract Documents.

(5) This property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

(6) Boiler and Machinery Insurance. The Owner shall have the option of purchasing and maintaining boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. If purchased this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work.

(7) Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Professional, Professional's consultants, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The policies shall provide waivers of subrogation by endorsement or otherwise.

(8) A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear.

(9) If Builders Risk coverage is applicable the Contractor shall be responsible for the following maximum deductibles per occurrence per paragraph (3) above. (check one)

All Risk Policy - \$1,000 maximum deductible

All Risk Policy - Maximum deductible of \$_____

Flood Policy - \$1,000 maximum deductible

Flood Policy - Maximum deductible of \$_____

AUTOMOBILE LIABILITY INSURANCE

Required by this Agreement? (check one) Yes No

(1) Automobile Liability Insurance shall be maintained by the Contractor/Consultant/Professional for the ownership, maintenance or use of any owned, non-owned or hired vehicle with limits of not less than: (check one)

Bodily Injury & Property Damage - \$ 500,000

Bodily Injury & Property Damage - \$1,000,000

(2) The Owner shall be named as an Additional Insured under the policy.

UMBRELLA LIABILITY

(1) Umbrella Liability may be maintained as part of the liability insurance of the Contractor/Consultant/Professional and, if so, such policy shall be excess of the Employers' Liability, Commercial General Liability and Automobile Liability coverages required herein and shall include all coverages on a "following form" basis.

(2) The policy shall contain wording to the effect that, in the event of the exhaustion of any underlying limit due to the payment of claims, the Umbrella policy will "drop down" to apply as primary insurance.

(3) The General Aggregate limit, if applicable, shall apply separately to this project and the policy shall be so endorsed.

PROFESSIONAL LIABILITY INSURANCE

Required by this Agreement? (check one) Yes No

(1) Professional Liability Insurance shall be maintained by the Consultant to insure its legal liability for claims arising out of the performance of professional services under this Agreement. Such insurance shall have limits of not less than: (CHECK ONE)

___ \$ 500,000 each claim and in the aggregate

x \$1,000,000 each claim and in the aggregate

___ \$2,000,000 each claim and in the aggregate

___ \$_____ each claim and in the aggregate

(2) Any deductible applicable to any claim shall be the sole responsibility of the Consultant and shall not be greater than \$50,000 each claim.

(3) The Consultant shall continue this coverage for this Project for a period of not less than five (5) years following completion and acceptance of the Project by the Owner.

END OF EXHIBIT D.

EXHIBIT E

TRUTH IN NEGOTIATION CERTIFICATE

In compliance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes MACTEC Engineering and Consulting hereby certifies that wages, rates and other factual unit costs supporting the compensation for the Engineering services of the CONSULTANT to be provided under the Professional Services Agreement are accurate, complete and current as of the time of contracting.

MACTEC Engineering and Consulting, Inc.

By:
Printed Name:
Title: