

CONTRACT NO. 2008000094
AGREEMENT BETWEEN CHARLOTTE COUNTY
and
MARY ANNE G. BOWIE ASSOCIATES INC.

For
US 17 CORRIDOR LAND USE STUDY

THIS AGREEMENT, is made and entered into this 20th day of MARCH 2008 by and between CHARLOTTE COUNTY, a political subdivision of the State of Florida, 18500 Murdock Circle, Port Charlotte, Florida 33948-1094, hereinafter referred to as the "COUNTY," and MARY ANNE G. BOWIE ASSOCIATES INC, 2864 Ringling Boulevard, Sarasota, Florida 34237, hereinafter referred to as the "CONSULTANT."

WITNESSETH

WHEREAS, the COUNTY has determined that it is necessary to retain a CONSULTANT to provide a land use study of the approximately eight-mile US 17 Corridor leading from the DeSoto County / Charlotte County boundary to the City of Punta Gorda boundary; and

WHEREAS, the CONSULTANT has reviewed RFP No. 2008000094 and Addendum No. 1 required pursuant to this Agreement and is qualified, willing and able to provide and perform all such services in accordance with its terms.

WHEREAS, the County, through a selection process conducted in accordance with the requirements of law and County policy, has determined that it would be in the best interest of the County to award a contract to Consultant for the rendering of those services described in the Scope of Services.

NOW, THEREFORE, the COUNTY and the CONSULTANT, in consideration of the mutual covenants contained herein, do agree as follows:

ARTICLE 1.
INCORPORATION OF DOCUMENTS

1.1. RFP No. 2008000094, consisting of pages 1 through and including 15 issued by County on December 14, 2007, as well as the provisions of Addendum No. 1 issued by County on January 9, 2008, and the Proposal submitted by Consultant dated January 15, 2008, all filed with the Clerk of the Circuit Court of Charlotte County, Minutes Division, as RFP No. 2008000094, are hereby specifically made part of this Agreement as if same had been set forth at length herein.

1.2. In the event of any conflict between the documents constituting this Agreement, the documents shall be given precedence in the following order:

- 1) This Agreement;
- 2) The Scope of Services attached hereto;
- 3) RFP No. 2008000094 and Addendum No. 1;
- 4) The Proposal submitted by Consultant dated January 15, 2008.

ARTICLE 2.
CONSULTANT'S SCOPE OF SERVICES

2.1. Consultant agrees to perform all the services and provide all the materials requested by RFP No. 2008000094 and described in the Scope of Services which is attached hereto as Exhibit A and incorporated herein by this reference, which are hereinafter collectively referred to as the "Scope of Services.

2.2. Consultant agrees to provide its services and materials in the times allowed for performance contained in the Scope of Services. The Consultant shall make no claims for additional compensation or damages owing to suspensions, delays, or hindrances which arise during the performance of this Agreement. Such suspensions, delays or hindrances may only be compensated for by an extension of time as the County may decide. However, such extension shall not operate as a waiver of any other rights of the County.

2.3. In the event that County desires Consultant to perform any additional services related to the Projects not specifically contained in the Scope of Services, the parties shall enter into an addendum to this Agreement to provide for the provision of such additional services by Consultant and payment therefore by County, based on the costs contained in Exhibit A.

ARTICLE 3.
COMPENSATION AND PAYMENT OF CONSULTANT'S SERVICES

3.1. County shall pay Consultant for those tasks listed in the Scope of Services actually performed by Consultant. The total payment to Consultant shall not exceed Forty-nine Thousand Five Hundred Dollars (\$49,500.00) for Consultant's services under this Agreement, performed in accordance with the Scope of Services and this Agreement.

3.2. Payment for services rendered by Consultant shall be made on a monthly basis in proportion to the percentage completed of those tasks listed in the Scope of Services. Percentage of services completed shall be subject to review and approval by the County Director of Growth Management or his designee.

3.3. Consultant shall submit all billings for payment of services rendered on a monthly basis to the County Purchasing Department for processing. Billings shall be detailed as to the nature of the services performed and shall refer to the specific tasks listed in the Scope of Services that were actually performed by Consultant. Billings shall include a summary of any amounts previously billed and any credits for amounts previously paid.

3.4. Consultant acknowledges that each billing must be reviewed and approved by the County Director of Growth Management. Should the County Director of Growth Management or his designee, determine that the billing is not commensurate with services performed, work accomplished or hours expended, Consultant shall adjust billing accordingly. However, Consultant shall be entitled to payment of any portion of a billing not in dispute.

3.5. County shall pay Consultant's monthly billings in accordance with Sections 218.70 through 218.80 Florida Statutes, the Local Government Prompt Payment Act.

ARTICLE 4.
CONSULTANT'S RESPONSIBILITIES

4.1. Consultant shall perform or furnish consulting and related services to a level of technical skill, ability, and diligence customarily provided by an experienced professional in his or her field of expertise when rendering the same services, and in accordance with sound principles and practices generally acknowledged by professionals in his or her field of expertise, as represented to the County, both orally and in writing, to be possessed by Consultant, all in accordance with the standards contained elsewhere in this Agreement and in accordance with generally accepted standards of professional consulting practice and with the laws, statutes, ordinances, codes, rules and regulations governing Consultant's profession. The same standards of care shall be required of any subconsultant or subcontractor engaged by Consultant.

4.2. Consultant shall, without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials arising from the negligent act, error or omission of Consultant or any subconsultant or subcontractor engaged by Consultant for one year after the completion of Consultant's services under this Agreement. The foregoing shall be construed as an independent duty to correct rather than a waiver of County's rights under any applicable statute of limitations. County review of, approval of, acceptance of, or payment for any of Consultant's work product, services, or materials shall not be construed to operate as a waiver of any of County's rights under this Agreement, or cause of action County may have arising out of the performance of this Agreement.

ARTICLE 5.
OWNERSHIP AND USE OF DOCUMENTS

5.1. All documents, data, studies, surveys, analyses, sketches, tracings, specifications, plans, designs, design calculations, details, computations, drawings, maps, models, photographs, reports, and other documents and plans resulting from Consultant's services under this Agreement shall become the property of and shall be delivered to County without restriction or limitation as to use. However, any use subsequent to or other than for the specific project for which such items were created, shall be at sole risk of County.

5.2. Consultant agrees that any software, computer systems and databases used for providing the documents necessary to this Agreement shall be compatible with existing COUNTY software and systems.

ARTICLE 6.
COUNTY'S RESPONSIBILITIES

6.1. County shall perform the responsibilities contained in this Article 6 in a timely manner so as not to delay the services of Consultant.

6.2. County shall furnish to Consultant, upon request of Consultant and at County expense, all existing studies, reports and other available data pertinent to the services to be performed under this Agreement which are within the County's possession. However, Consultant shall be required to evaluate all materials furnished hereunder using reasonable professional judgment before relying on such materials.

6.3. County shall provide reasonable access and entry to all public property required by Consultant to perform the services described in this Agreement. All such access and entry shall be provided at County expense. County shall also use reasonable efforts to obtain permission for reasonable access and entry to any private property required by Consultant to perform the services described in this Agreement.

ARTICLE 7.
TERM / TERMINATION

7.1. The term of this Agreement shall begin on the date and year first above written and shall continue until Consultant completes all services and provides all products contained in the Scope of Services and required under this Agreement, and County accepts such services and products as satisfactory, unless otherwise terminated in accordance herewith.

7.2. The COUNTY shall have the right at any time upon thirty (30) calendar days written notice to the CONSULTANT to terminate the services of the CONSULTANT and, in that event, the CONSULTANT shall cease work and shall deliver to the COUNTY all documents, (including reports, designs, specifications, and all other data) prepared or obtained by the CONSULTANT in connection with its services. The COUNTY shall, upon receipt of the aforesaid documents, pay to the CONSULTANT, and the CONSULTANT shall accept as full payment for its services, fees for all tasks completed in accordance with Scopes of Services.

7.3. In the event that the CONSULTANT has abandoned performance under this Agreement, then the COUNTY may terminate this Agreement upon three (3) calendar day's written notice to the CONSULTANT indicating its intention to terminate. The written notice shall state the evidence indicating the CONSULTANT's abandonment. Payment for services performed prior to the CONSULTANT's abandonment shall be as stated Section 3 above.

ARTICLE 8.
NOTICES

8.1 Any notice required or permitted to be sent hereunder shall be sent certified mail, return receipt requested to the parties at the addresses listed below:

CONSULTANT:

Name: Mary Anne G. Bowie Associates, Inc.
Name: Mary Anne G. Bowie
Address: 2864 Ringling Boulevard
Sarasota, FL 34237

COUNTY:

Purchasing Department
Name: Kimberly A. Corbett, Director
Address: 18500 Murdock Circle, Ste. 344
Port Charlotte, FL 33948

ARTICLE 9.
NO CONTINGENT FEES

9.1 Consultant certifies 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 the breach or violation of

this provision, County shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 10.
TRUTH-IN-NEGOTIATION CERTIFICATE

10.1 In accordance with Section 287.055 Florida Statutes and Charlotte County Resolution 2003-059, 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 County determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

ARTICLE 11.
ASSIGNMENT

11.1. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances by Consultant without the prior written consent of County. Further, no portion of this Agreement may be performed by subcontractors or subconsultants without written notice to and approval of such action by County.

ARTICLE 12.
EXTENT OF AGREEMENT / SEVERABILITY / MODIFICATION

12.1 This Agreement represents the entire and integrated agreement between the County and Consultant and supersedes all prior negotiations, representations or agreement, either written or oral.

12.2 In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition or covenant shall not be construed by the other party as a waiver of any subsequent breach.

12.3. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by both parties.

12.4. This is a nonexclusive contract. The County has the right to enter into contracts with other consultants for the providing land use study services.

ARTICLE 13.
GOVERNING LAW / VENUE

13.1 This Agreement shall be governed and construed in accordance with Florida law. In the event any litigation arises between the parties in connection with this Agreement, venue for such litigation shall lie exclusively in Charlotte County, Florida.

ARTICLE 14.
INDEPENDENT CONTRACTOR STATUS

14.1 Consultant is an independent contractor and is not an employee, servant, agent, partner or joint venturer of the County.

Neither the County nor any of its employees shall have any control over the conduct of Consultant or any of Consultant's employees, except as herein set forth, and Consultant expressly warrants not to represent at any time or in any manner that Consultant or any of Consultant's agents, servants or employees are in any manner agents, servants or employees of the County. It is understood and agreed that Consultant is, and shall at all times remain as to the County, a wholly independent contractor and that Consultant's obligations to the County are solely as prescribed by this Agreement.

ARTICLE 15.
AUDIT REQUIREMENTS

15.1 Consultant shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at Consultant's offices for the purpose of inspection, audit, and copying during normal business hours by the County, or any of its authorized representatives. Such records shall be retained for a minimum of three (3) years after completion of the services. Prior to destruction of any records, the Consultant shall notify the County and deliver to the County any records the County requests. Consultant shall require all subcontractors to comply with the provisions of this paragraph by insertion of the requirements hereof in a written contract agreement between Consultant and the subcontractor.

ARTICLE 16.
INDEMNIFICATION

16.1 For ten dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Consultant shall indemnify and hold harmless County, 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 Consultant and other persons employed or utilized by Consultant in the performance of services under this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties hereto have caused the execution of these premises as of the date and year first above written.

MARY ANNE G. BOWIE
ASSOCIATES, INC.

WITNESSES:

Signed By: Anne Cederberg

Print Name: Anne Cederberg

Date: 3/25/08

Signed By: [Signature]

Print Name: Sallie Scribner

Date: 03/25/08

Signed by: Mary Anne G. Bowie

Print Name: Mary Anne G. Bowie

Title: PRESIDENT

Date: 3/25/08

ATTEST:

Barbara T. Scott, Clerk of Circuit Court and Ex-officio Clerk to the Board of County Commissioners

By: Anne Pablier
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

By: [Signature]
Thomas C. D'Aprile, Chairman

Date: March 25, 2008

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: Janette S. Knowlton
Janette S. Knowlton, County Attorney
LR 08-216 ^{SCA}

Exhibit List:
Exhibit A - Work Program

Exhibit A
Work Program Page 1
Tasks and Budget for US 17 Corridor Study

Task 1. Receive Notice to Proceed; Attend project start up meeting at Charlotte County offices with Charlotte County Client Project Manager, a.k.a. Client Representative.

Begin Date: April 1, 2008

Deliverables: Start up Client meeting and Memorandum of Project Understanding. Receive available government furnished materials. Discuss government furnished materials re: demographics being prepared by others. Review government furnished materials. Prepare memorandum of understanding regarding project timing and expectations based upon Client meeting and other communication (email, phone).

Participants: Mary Anne Bowie and Client Representative

Budget: \$1500

Task 2. Review and analyze existing comprehensive plan, zoning and land development controlling regulations.

Begin Date: April 15, 2008

Deliverables: Technical Memorandum Number 1: Existing Controlling Regulatory Parameters

Participants: Mary Anne Bowie

Budget: \$4500

Task 3. Initial GIS and Environmental Analysis of Corridor. Begin land use analysis and perform initial research and identification of community catalysts. Also, evaluate impact of the area west of US 17 to the Peace River on the US 17 corridor.

Begin Date: April 15, 2008

Deliverables: Design With Nature Maps: GIS maps will be developed for an area approximately 500 feet on either side of US 17, following the property boundaries, with all significant environmental factors noted and analyzed over base information containing all property ID boundaries and zoning, comprehensive plan, existing utilities, streets and other elements.

Participants: Mary Anne Bowie and Biological Research Associates, Inc.

Budget: \$10,000

Exhibit A
Work Program Page 2
Tasks and Budget for US 17 Corridor Study

Task 4. Evaluate demographics, existing land uses and development patterns, existing and future utility availability and solidify community catalysts. Coordinate efforts with Renaissance Planning Group's on-going work.

Begin Date: May 20, 2008

Deliverables: Technical Memorandum Number 2: Demographics and Existing Development

Participants: Mary Anne Bowie, Stephen Horn and John Minder

Budget: \$6000

Task 5. Develop sustainable development land use control policy recommendations addressing appearance, access, mobility, economic development, environmental quality.

Begin Date: June 1, 2008

Deliverables: Draft Technical Memorandum 3: Proposed US 17 Sustainable Development Policies

Participants: Mary Anne Bowie, Frank Solinko, Michael Carlson, Stephen Horn, John Minder

Budget: \$ 8,500

Task 6. Review and revise sustainable development land use control policy recommendations

Begin Date: July 1, 2008

Deliverables: After appropriate review period of Task 6 deliverable, meet in one meeting with Client Representative and one meeting with other members of County to come to consensus on land use control policy recommendations. Prepare Final Technical Memorandum 3: US 17 Sustainable Development Policies

Bowie will serve as the facilitator at the July meeting/workshop, which the Growth Management Department will host, and the public will attend. Bowie will discuss the US 17 land use policies and recommendations she has developed for the County to the citizens.

Participants: Mary Anne Bowie, Client Representative

Budget: \$ 3,000

Task 7. Propose Corridor Land Uses

Begin Date: August 1, 2008

Deliverables: Proposed Development Map: Hand drawn on Task 4 Design with Nature GIS Maps: draft concept of market appropriate and infrastructure appropriate future land use patterns

Participants: Mary Anne Bowie and Stephen Horn

Budget: \$4500

Task 8. Public and Government outreach and coordination with private and public stakeholders

Begin Date: September 1, 2008

Deliverables: Bowie will serve as facilitator and/or appear at a series of small and large meetings and workshops with County staff, FDOT, other stakeholders and the public in the community (up to 4 meetings to be held on a total of three days) to test the overall, proposed corridor land use patterns and sustainable land development policies. Meeting arrangements, publicity, stakeholder identification, minutes, etc. to be provided by Client.

Participants: Mary Anne Bowie and Client Representative

Budget: \$4000

2864 Ringling Blvd. Sarasota, FL 34237 ■ Phone: 941.953.3588 ■ Fax: 941.953.9553

Exhibit A
Work Program Page 3
Tasks and Budget for US 17 Corridor Study

Task 9. Final Land Use Policy formation addressing appearance, access, mobility, economic development, environmental quality

Begin Date: October 1, 2008 or as directed by Project Manager

Deliverables: Revised Technical Memorandum 3: Policy recommendations revised in response to public meetings and then presented to Client Representative and Department of Community Affairs. Technical Memorandum 4: Describe consultation regarding compliance of proposed policy guidelines with Department of Community Affairs.

Participants: Mary Anne Bowie and Client Representative

Budget: \$2500

Task 10. Policy Recommendations Formatted for Adoption

Begin Date: November 1, 2008 or as directed by Project Manager

Deliverables: Policy recommendations delivered in language suitable for adoption by Board of County Commissioners

Participants: Mary Anne Bowie, Stephanie Reinicke, Client Representative, Charlotte County Attorney

Budget: \$2500

Task 11. Land Use map delivered reflecting specific site and corridor detailed research and outreach efforts

Begin Date: December 1, 2008 or as directed by Project Manager

Deliverables: Final Land use map delivered. Final corridor boundaries defined; Sizes and locations of specific development parcels hand drawn and located on Task 4 Design with Nature Map Deliverables. Proposed comprehensive plan and zoning changes noted. After adoption by Charlotte County of new land use plan categories and rezonings, final GIS preparation will be responsibility of Charlotte County.

Participants: Mary Anne Bowie and John Minder

Budget: \$2500

BUDGET TOTAL \$49,500

Additional Tasks as Requested

Begin Date: Upon Contract completion or before

Deliverables: As requested

Participants: Mary Anne Bowie and others as directed by Charlotte County

Budget: to be defined in addendum to contract