

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM****SUBJECT:** Contracts and Purchasing**DEPARTMENT:** Fiscal Services **DIVISION:** Purchasing and Contracts Division**AUTHORIZED BY:** Lisa H. Spriggs **CONTACT:** Ray Hooper **EXT.** 7111

Agenda Date 3/22/2005 Regular ☐ Consent ☒ Work Session ☐ Briefing ☐  
Public Hearing – 1:30 ☐ Public Hearing – 7:00 ☐

**MOTION/RECOMMENDATION:****BACKGROUND:****MISCELLANEOUS CONTRACTS**

10. Approve a proprietary source procurement and award M-485-05/PWM – Pavement Management Program, to Infrastructure Management Services, Inc. (IMS) of Rolling Meadows, Illinois (\$200,000.00 per year).

Reviewed by:

Co Atty: \_\_\_\_\_

DFS: \_\_\_\_\_

Other: \_\_\_\_\_

DCM: \_\_\_\_\_

CM: \_\_\_\_\_

File No. CFSP10

Since 1988, Seminole County has utilized pavement management system technology as a key tool to comprehensively and objectively evaluate the condition of the County's roadways, then as a guide to cost effectively plan and program both near and long term roadway maintenance and rehabilitation activities. To fully reap the significant benefits of pavement management system technology, it must be used to establish and maintain an ongoing and accurate multi-faceted database of pavement conditions upon which to base maintenance, repair and/or reconstruction strategies.

Given the significant time and financial investment required to develop the software associated with pavement management system programs, most such software is proprietary, and that is the case with the County's current program. Infrastructure Management Services, Inc. (IMS) has provided and supported the County's pavement management system needs since 1988, first on a periodic basis during the initial implementation phases of the County's program, then on an ongoing basis since the early 1990s.

Over this now nearly 17 year period, during which the County has employed IMS's services, a significant amount of data has been compiled in the IMS format. That software format is fully compatible with the County's existing GIS (Geographic Information System) and MaintStar (maintenance management system) software, and thereby integrates the IMS pavement test data with GIS and MaintStar. IMS is currently the only known firm that can transfer road test data directly into the software, and can therefore be legitimately considered a sole source. Even assuming that the now considerable amount of data in the proprietary IMS format could be converted to a new format by another firm, to provide the critical compatibility required with the County's GIS, MaintStar and other associated software would represent an extensive technical database effort which would be costly.

The pavement management system program services provided by IMS consist of Road Surface Test (RST) surface condition surveys, Falling Weight Deflectometer (FWD) testing utilizing an instrument to analyze the structural integrity of the roadway subsurface (i.e., the base), GIS (Geographic Information System) location/positioning, ROW (Right-of-Way) Asset Extraction for new roads or those under construction, and extraction of prior digital imaging for uploading into GIS and associated software.

The contract services also provide for annual maintenance and training on Pave Pro Manager software, a program which provides maintenance recommendations as well as the status of the overall roadway system, and on ROWMan software, which is an assessment/inventory system program for roadway corridor-associated infrastructure such as sidewalks, gutters, guardrails and handrails. Both Pave Pro Manager and ROWMan are IMS proprietary software packages.

To comply with national GASB-34 accounting requirements, the County uses its pavement management program to inspect and evaluate every road in the county network once every three years. Award of this proprietary source contract to IMS will enable the County to maintain this required three-year test cycle. This contract award will also keep the County on the cutting edge of pavement condition evaluation and rehabilitation, thus insuring that the taxpayers' infrastructure investment continues to be protected into the future.

In keeping with the above described three-year test cycle, the term for IMS's services under the recommended contract will be for a three year base period with three, one-year renewal options, for a total potential contract term of six years. *Authorization for performance of services by the Contractor under this agreement shall be in the form of written Work Orders issued and executed by the County and signed by the Contractor.* The work and dollar amount for each Work Order will be within budgetary constraints and negotiated on an as-needed basis. The estimated contract value is \$200,000.00 per year.

Public Works/Roads-Stormwater Division and Fiscal Services/Purchasing and Contracts Division recommend that the Board approve the proprietary procurement and authorize the Chairman to execute the Agreement M-485-05/PWM as prepared by the County Attorney's Office.

## **MISCELLANEOUS CONTRACTS**

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**SOLE SOURCE / PROPRIETARY SOURCE  
PURCHASE DATA SHEET  
PURCHASING AND CONTRACTS DIVISION**

SOLE SOURCE ☐PROPRIETARY SOURCE ☒

Date Submitted: 02/01/2005		Requestor: Fred Mueller	
Requisition No.:		Dept./Div.: Public Works/Roads-Stormwater	
Item Description: RPO-Surface Distress Surveying (Various) County Roads (Asset & Pavement Mgmt.)			
Your Selected Vendor's Name: Infrastructure Management Services, Inc.			
Vendor's address: 1895-D Rohlwing Road, Rolling Meadows, IL 60008			
Vendor's Phone & Fax No.: 847-506-1500 Fax 847-255-2938			
Vendor's Contact Person: Donald L. Hardt			
Justification, state why this is the only item which will fulfill your needs:			
<p>The Seminole County Roads-Stormwater Division currently uses proprietary software supplied by Infrastructure Management Services of Rolling Meadows, Illinois, to compile data and assess pavement conditions throughout the county's road network for our pavement management program. Seminole County Government has employed this firm's service for over ten years, and has 10 years of data in the IMS format that would not be available under any other software without some additional manipulation (at additional cost) if it could be converted at all. Further, the IMS software is fully compatible with the County's existing GIS and MaintStar databases, integrating the pavement test data, the GIS and the maintenance management software. The award of this proprietary source will insure that Seminole County Government's pavement management system will stay on the cutting edge of pavement condition evaluation and rehabilitation, insuring the taxpayer's investment is used in the most advantageous manner in the future. This system is also an essential tool in compliance to GASB 34 mandates. IMS is the only known company that can transfer the Road Surface Test data and Dynatest data into our software. An outline of the services provided is attached.</p>			
Comment and/or verify if there are other sources of supply that meet this need:			
M-485-05/PWM			
Vendor #1 Contact:		Phone #	
Vendor #2 Contact:		Phone #	
Vendor #3 Contact:		Phone #	
Attachments:		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Requesting Division Head Signature:		Date: 2/3/05	
Requesting Department Head Signature:		Date: 2-4-05	
<b>Reviewing Purchasing and Contracts Staff</b>			
Buyer/Contracts Analyst Review:		Date:	
Supervisor Review:		Date: 2/7/05	
<b>Purchasing Manager - Determination</b>			
Comments:			
Approval/Disapproval of:			
Purchasing Manager Signature:		Date: 2/7/05	
PO/Contract No.:		Amount: \$ 200K/YR 3 yrs + 3 yrs	

## EXHIBIT "A"

November 5, 2004

Seminole County  
Road Operations Division  
169 Bush Loop  
Sanford, FL 32773



Attention: Mr. Fred Mueller, Lead Inspector  
Reference: Pavement Management Program Update

Dear Mr. Mueller:

IMS Infrastructure Management Services is pleased to submit our proposal to update the County's pavement management program. IMS proposes to perform a Stereo RST surface condition survey and FWD deflection survey on the roads in Districts 2 and 3. Field testing services will be performed at the network level using sectioning and testing protocols similar to previous surveys. New quality control initiatives, developed in conjunction with County staff, will be incorporated in this and all future projects. They include internal reviews of the field testing, processing and data deliverables by senior IMS staff. County staff will review a sampling of processed data from initial field tests to further confirm the accuracy/calibration of the automated data collection equipment and methodologies.

In addition, IMS proposes to complete the manual aligning and smoothing of existing Seminole County GIS centerline features to match aerial photos. This activity will complete the GIS/ROWMan edits (option #3) for previously collected sidewalk, curb and gutter, handrail and guardrail assets.

IMS also proposes to provide the requested digital images for viewing through the County's existing Pave Pro Manager software and potentially through the County's GIS. IMS will extract Jpeg images from previously collected digital video at intervals not to exceed 50' in length. Coverage will be for the complete County road network including all 5 districts. The digital images will be ready for loading to Pave Pro Manager software and will include GPS/sectioning references and shape files for future use with the County's GIS.

As part of this project IMS will perform ROW asset extraction for roadways that were under construction or not included during the previous project. ROW data for the roads identified by the County including portions of 427, 419 and Lake Mary Blvd. will be provided at no charge to the County. Dave Butler, Senior Engineer and Dan Hardtke, Project Manager will visit with County staff, compare program data to in-place field conditions, and be available to address any County concerns or make adjustments to ensure that the program continues to provide the management tools necessary to meet the needs of the County.

IMS will provide additional training for County staff. Dave Butler will provide three (3) days of training covering both PavePro Manager and ROWMan software. The three days will be split into two separate trips with agendas directed toward the needs of field staff, office staff and administrators. Additional training will be available upon request.

IMS will schedule our project team and required equipment to complete the project and deliver the referenced data to the County by February 28, 2005. We anticipate commencing the field activities during December, 2004 and will need the appropriate authorization to proceed to meet the County's required time schedule.

Based on extracted quantities from our database of previously tested roads, we estimate that updates for Districts 2 and 3 will include the following test miles:

District 2 – 98.13 miles (1088 sections)  
 District 3 – 161.07 miles (1657 sections)

The 260 test miles of road in Districts 2 and 3 comprise just under 1/3 of the County's total road network (832.49 test miles). This update falls within the County's goal to retest the road network on a three (3) year cycle.

IMS proposes to perform this pavement management update according to the following fee schedule:

Project Set-up/Sectioning	\$2,500
RST Surface Condition Survey 265 test miles @ \$105/mi	\$27,825
FWD Deflection Testing 265 test miles @ \$110/mi	\$29,150
Pave Pro Manager/GIS Linkage	\$2,500
Asset Extraction – roads under construction from previous survey	N.C.
GIS/ROWMan Edit (Option 3)	\$4,375
Digital Images @ 50' intervals with GPS and Shape files	\$22,750
Software Training 3 days – 2 trips	<u>\$4,000</u>
<b>Pavement Management Update Total</b>	<b>\$93,100</b>
<u>Options</u>	
Additional Training	\$1,000/day
Annual Software Maintenance	
Pave Pro Manager – Network Version	\$3,000
ROWMan – Network Version	\$1,250

The above referenced cost summary was based on an estimated mileage of 265. This allows for approximately 5 miles of new road acquisition since the last survey. IMS will charge only for the actual miles tested and delivered to the County as an update to the pavement management program.



We look forward to our continued work the County. If you have any questions regarding this proposal, please feel free to contact our office.

Very truly yours,

IMS Infrastructure Management Services

A handwritten signature in black ink, appearing to read "Donald L. Hardt", written in a cursive style.

Donald L. Hardt  
Manager of Client Services

**Board of County Commissioners**  
**SEMINOLE COUNTY, FLORIDA**

# WORK ORDER

Work Order Number: \_\_\_\_\_

Master Agreement No.: \_\_\_\_\_ Dated: \_\_\_\_\_  
 Contract Title: \_\_\_\_\_  
 Project Title: \_\_\_\_\_

Consultant: \_\_\_\_\_  
 Address: \_\_\_\_\_

**ATTACHMENTS TO THIS WORK ORDER:**

- ☐ drawings/plans/specifications  
☐ scope of services  
☐ special conditions  
☐ \_\_\_\_\_

**METHOD OF COMPENSATION:**

- ☐ fixed fee basis  
☐ time basis-not-to-exceed  
☐ time basis-limitation of funds

**TIME FOR COMPLETION:** The services to be provided by the CONTRACTOR shall commence upon execution of this Agreement by the parties and shall be completed within "X" (days, months, years) of the effective date of this agreement. Failure to meet the completion date may be grounds for Termination for Default.

Work Order Amount: \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purposes stated herein.

(THIS SECTION TO BE COMPLETED BY THE COUNTY)

**ATTEST:**

\_\_\_\_\_  
 (Company Name)

\_\_\_\_\_, Secretary

By: \_\_\_\_\_, President

(CORPORATE SEAL)

Date: \_\_\_\_\_

**ATTEST:**

BOARD OF COUNTY COMMISSIONERS  
 SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
 MARYANNE MORSE  
 Clerk to the Board of County Commissioners of  
 Seminole County, Florida

By: \_\_\_\_\_  
 DARYL G. MCLAIN, Chairman

Date: \_\_\_\_\_

For use and reliance of Seminole County only.  
 Approved as to Form and legal sufficiency.

As authorized for execution by the Board of  
 County Commissioners at their \_\_\_\_\_,  
 20\_\_\_\_ regular meeting.

\_\_\_\_\_  
 County Attorney

## **WORK ORDER TERMS AND CONDITIONS**

- a) Execution of this Work Order by the COUNTY shall serve as authorization for the CONSULTANT to provide, for the stated project, professional services as set out in the Scope of Services attached as Exhibit "A" to the Master Agreement cited on the face of this Work Order and as further delineated in the attachments listed on this Work Order.
- b) Term: This work order shall take effect on the date of its execution by the County and expires upon final delivery, inspection, acceptance and payment unless terminated earlier in accordance with the Termination provisions herein.
- c) The CONSULTANT shall provide said services pursuant to this Work Order, its Attachments, and the cited Master Agreement (as amended, if applicable) which is incorporated herein by reference as if it had been set out in its entirety.
- d) Whenever the Work Order conflicts with the cited Master Agreement, the Master Agreement shall prevail.
- e) METHOD OF COMPENSATION - If the compensation is based on a:
  - (i) FIXED FEE BASIS, then the Work Order Amount becomes the Fixed Fee Amount and the CONSULTANT shall perform all work required by this Work Order for the Fixed Fee Amount. The Fixed Fee is an all-inclusive Firm Fixed Price binding the CONSULTANT to complete the work for the Fixed Fee Amount regardless of the costs of performance. In no event shall the CONSULTANT be paid more than the Fixed Fee Amount.
  - (ii) TIME BASIS WITH A NOT-TO-EXCEED AMOUNT, then the Work Order Amount becomes the Not-to-Exceed Amount and the CONSULTANT shall perform all the work required by this Work Order for a sum not exceeding the Not-to-Exceed Amount. In no event is the CONSULTANT authorized to incur expenses exceeding the not-to-exceed amount without the express written consent of the COUNTY. Such consent will normally be in the form of an amendment to this Work Order. The CONSULTANT's compensation shall be based on the actual work required by this Work Order and the Labor Hour Rates established in the Master Agreement.
  - (iii) TIME BASIS WITH A LIMITATION OF FUNDS AMOUNT, then the Work Order Amount becomes the Limitation of Funds amount and the CONSULTANT is not authorized to exceed the Limitation of Funds amount without prior written approval of the COUNTY. Such approval, if given by the COUNTY, shall indicate a new Limitation of Funds amount. The CONSULTANT shall advise the COUNTY whenever the CONSULTANT has incurred expenses on this Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount. The CONSULTANT's compensation shall be based on the actual work required by this Work Order and the Labor Hour Rates established in the Master Agreement.
- f) Payment to the CONSULTANT shall be made by the COUNTY in strict accordance with the payment terms of the referenced Master Agreement.
- g) It is expressly understood by the CONSULTANT that this Work Order, until executed by the COUNTY, does not authorize the performance of any services by the CONSULTANT and that the COUNTY, prior to its execution of the Work Order, reserves the right to authorize a party other than the CONSULTANT to perform the services called for under this Work Order; if it is determined that to do so is in the best interest of the COUNTY.
- h) The CONSULTANT shall sign the Work Order first and the COUNTY second. This Work Order becomes effective and binding upon execution by the COUNTY and not until then. A copy of this Work Order will be forwarded to the CONSULTANT upon execution by the COUNTY.

**CONSULTANT SERVICES AGREEMENT (M-485-05/PWM)**  
**PAVEMENT MANAGEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **INFRASTRUCTURE MANAGEMENT SERVICES, INC.**, duly authorized to conduct business in the State of Florida, whose address is 1895-D Rohlwing Road, Rolling Meadows, Illinois 60008, hereinafter called the "CONSULTANT" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter called the "COUNTY".

**W I T N E S S E T H:**

**WHEREAS**, the COUNTY desires to retain the services of a competent and qualified consultant to provide pavement management services in Seminole County; and

**WHEREAS**, the COUNTY has requested and received expressions of interest for the retention of services of consultants; and

**WHEREAS**, the CONSULTANT is competent and qualified to furnish consultant services to the COUNTY and desires to provide professional services according to the terms and conditions stated herein,

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, the COUNTY and the CONSULTANT agree as follows:

**SECTION 1. SERVICES.** The COUNTY does hereby retain the CONSULTANT to furnish professional services and perform those tasks as further described in the Scope of Services attached hereto as Exhibit "A" and made a part hereof. Required services shall be specifically enumerated, described and depicted in the Work Orders authorizing performance of the specific project, task or study. This Agreement standing alone does not authorize the performance of any work or require the COUNTY to place any orders for work.

**SECTION 2. TERM.** This Agreement shall take effect on the date of its execution by the COUNTY and shall run for a period of three (3) years and, at the sole option of COUNTY, may be renewed for three (3) successive periods not to exceed one (1) year each. Expiration of the term of this Agreement shall have no effect upon Work Orders issued pursuant to this Agreement and prior to the expiration date. Obligations entered therein by both parties shall remain in effect until completion of the work authorized by the Work Order.

**SECTION 3. AUTHORIZATION FOR SERVICES.** Authorization for performance of professional services by the CONSULTANT under this Agreement shall be in the form of written Work Orders issued and executed by the COUNTY and signed by the CONSULTANT. A sample Work Order is attached hereto as Exhibit "B". Each Work Order shall describe the services required, state the dates for commencement and completion of work and establish the amount and method of payment. The Work Orders will be issued under and shall incorporate the terms of this Agreement. The COUNTY makes no covenant or promise as to the number of available projects, nor that, the CONSULTANT will perform any project for the COUNTY during the life of this Agreement. The COUNTY reserves the right to contract with other parties for the services contemplated by this Agreement when it is determined by the COUNTY to be in the best interest of the COUNTY to do so.

**SECTION 4. TIME FOR COMPLETION.** The services to be rendered by the CONSULTANT shall be commenced, as specified in such Work Orders as may be issued hereunder, and shall be completed within the time specified therein. In the event the COUNTY determines that significant benefits would accrue from expediting an otherwise established time schedule for completion of services under a given Work Order, that Work Order may include a negotiated schedule of incentives based on time

savings.

**SECTION 5. COMPENSATION.** The COUNTY agrees to compensate the CONSULTANT for the professional services called for under this Agreement on either a "Fixed Fee" basis or on a "Time Basis Method". If a Work Order is issued under a "Time Basis Method," then CONSULTANT shall be compensated in accordance with the rate schedule included in Exhibit "A". If a Work Order is issued for a "Fixed Fee Basis," then the applicable Work Order Fixed Fee amount shall include any and all reimbursable expenses. The total compensation paid to the CONSULTANT annually, including reimbursable expenses, shall not exceed the sum of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00) per year.

**SECTION 6. REIMBURSABLE EXPENSES.** If a Work Order is issued on a "Time Basis Method," then reimbursable expenses are in addition to the hourly rates. Reimbursable expenses are subject to the applicable "Not-to-Exceed" or "Limitation of Funds" amount set forth in the Work Order. Reimbursable expenses may include actual expenditures made by the CONSULTANT, his employees or his professional associates in the interest of the Project for the expenses listed in the following paragraphs:

(a) Expenses of transportation, when traveling in connection with the Project, based on Sections 112.061(7) and (8), Florida Statutes, or their successor; long distance calls and telegrams; and fees paid for securing approval of authorities having jurisdiction over the Project.

(b) Expense of reproductions, postage and handling of drawings and specifications.

(c) If authorized in writing in advance by the COUNTY, the cost of other expenditures made by the CONSULTANT in the interest of the Project.

## **SECTION 7. PAYMENT AND BILLING.**

(a) If the Scope of Services required to be performed by a Work Order is clearly defined, the Work Order shall be issued on a "Fixed Fee" basis. The CONSULTANT shall perform all work required by the Work Order but, in no event, shall the CONSULTANT be paid more than the negotiated Fixed Fee amount stated therein.

(b) If the Scope of Services is not clearly defined, the Work Order may be issued on a "Time Basis Method" and contain a Not-to Exceed amount. If a Not-to-Exceed amount is provided, the CONSULTANT shall perform all work required by the Work Order; but, in no event, shall the CONSULTANT be paid more than the Not-to-Exceed amount specified in the applicable Work Order.

(c) If the Scope of Services is not clearly defined, the Work Order may be issued on a "Time Basis Method" and contain a Limitation of Funds amount. The CONSULTANT is not authorized to exceed that amount without the prior written approval of the COUNTY. Said approval, if given by the COUNTY, shall indicate a new Limitation of Funds amount. The CONSULTANT shall advise the COUNTY whenever the CONSULTANT has incurred expenses on any Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount.

(d) For Work Orders issued on a "Fixed Fee Basis," the CONSULTANT may invoice the amount due based on the percentage of total Work Order services actually performed and completed; but, in no event, shall the invoice amount exceed a percentage of the Fixed Fee amount equal to a percentage of the total services actually completed. The COUNTY shall pay the CONSULTANT ninety percent (90%) of the approved amount on Work Orders issued on a "Fixed Fee Basis".

(e) For Work Orders issued on a "Time Basis Method" with a Not-to-Exceed amount, the CONSULTANT may invoice the amount due for actual

work hours performed but, in no event, shall the invoice amount exceed a percentage of the Not-to-Exceed amount equal to a percentage of the total services actually completed. The COUNTY shall pay the CONSULTANT ninety percent (90%) of the approved amount on Work Orders issued on a "Time Basis Method" with a Not-to-Exceed amount.

(f) Each Work Order issued on a "Fixed Fee Basis" or "Time Basis Method" with a Not-to-Exceed amount shall be treated separately for retainage purposes. If the COUNTY determines that work is substantially complete and the amount retained is considered to be in excess, the COUNTY may, at its sole and absolute discretion, release the retainage or any portion thereof.

(g) For Work Orders issued on a "Time Basis Method" with a Limitation of Funds amount, the CONSULTANT may invoice the amount due for services actually performed and completed. The COUNTY shall pay the CONSULTANT one hundred percent (100%) of the approved amount on Work Orders issued on a "Time Basis Method" with a Limitation of Funds amount.

(h) Payments shall be made by the COUNTY to the CONSULTANT when requested as work progresses for services furnished, but not more than once monthly. Each Work Order shall be invoiced separately. CONSULTANT shall render to COUNTY, at the close of each calendar month, an itemized invoice properly dated, describing any services rendered, the cost of the services, the name and address of the CONSULTANT, Work Order Number, Contract Number and all other information required by this Agreement.

The original invoice shall be sent to:

Director of County Finance  
Seminole County Board of County Commissioners  
Post Office Box 8080  
Sanford, Florida 32772

A duplicate copy of the invoice shall be sent to:



Seminole County Public Works Department  
520 W. Lake Mary Boulevard, Suite 200  
Sanford, Florida 32773

(i) Payment shall be made after review and approval by COUNTY within thirty (30) days of receipt of a proper invoice from the CONSULTANT.

**SECTION 8. GENERAL TERMS OF PAYMENT AND BILLING.**

(a) Upon satisfactory completion of work required hereunder and, upon acceptance of the work by the COUNTY, the CONSULTANT may invoice the COUNTY for the full amount of compensation provided for under the terms of this Agreement including any retainage and less any amount already paid by the COUNTY. The COUNTY shall pay the CONSULTANT within thirty (30) days of receipt of proper invoice.

(b) The COUNTY may perform or have performed an audit of the records of the CONSULTANT after final payment to support final payment hereunder. This audit would be performed at a time mutually agreeable to the CONSULTANT and the COUNTY subsequent to the close of the final fiscal period in which the last work is performed. Total compensation to the CONSULTANT may be determined subsequent to an audit as provided for in subsections (b) and (c) of this Section, and the total compensation so determined shall be used to calculate final payment to the CONSULTANT. Conduct of this audit shall not delay final payment as provided by subsection (a) of this Section.

(c) In addition to the above, if federal funds are used for any work under the Agreement, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records, of the CONSULTANT which are directly pertinent to work performed under this Agreement for purposes of making audit, examination, excerpts and transcriptions.

(d) The CONSULTANT agrees to maintain all books, documents, papers, accounting records and other evidences pertaining to work performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at the CONSULTANT'S office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under the contract for audit or inspection as provided for in subsections (b) and (c) of this Section.

(e) In the event any audit or inspection conducted after final payment, but within the period provided in paragraph (d) of this Section reveals any overpayment by the COUNTY under the terms of the Agreement, the CONSULTANT shall refund such overpayment to the COUNTY within thirty (30) days of notice by the COUNTY.

#### **SECTION 9. RESPONSIBILITIES OF THE CONSULTANT.**

(a) The CONSULTANT shall be responsible for the professional quality, technical accuracy, competence, methodology, accuracy and the coordination of all of the following which are listed for illustration purposes and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by the CONSULTANT under this Agreement. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in his plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature.

(b) Neither the COUNTY'S review, approval or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Agreement nor of any cause of action arising out of the performance of this Agreement and the CONSULTANT shall be and always remain liable to the COUNTY in accordance

with applicable law for any and all damages to the COUNTY caused by the CONSULTANT'S negligent or wrongful performance of any of the services furnished under this Agreement.

**SECTION 10. OWNERSHIP OF DOCUMENTS.** All deliverable analysis, reference data, survey data, plans and reports or any other form of written instrument or document that may result from the CONSULTANT'S services or have been created during the course of the CONSULTANT'S performance under this Agreement shall become the property of the COUNTY after final payment is made to the CONSULTANT.

**SECTION 11. TERMINATION.**

(a) The COUNTY may, by written notice to the CONSULTANT terminate this Agreement or any Work Order issued hereunder, in whole or in part, at any time, either for the COUNTY'S convenience or because of the failure of the CONSULTANT to fulfill its Agreement obligations. Upon receipt of such notice, the CONSULTANT shall:

(1) immediately discontinue all services affected unless the notice directs otherwise, and

(2) deliver to the COUNTY all data, drawings, specifications, reports, estimates, summaries, and any and all such other information and materials of whatever type or nature as may have been accumulated by the CONSULTANT in performing this Agreement, whether completed or in process.

(b) If the termination is for the convenience of the COUNTY, the CONSULTANT shall be paid compensation for services performed to the date of termination. If this Agreement calls for the payment based on a Fixed Fee amount, the CONSULTANT shall be paid no more than a percentage of the Fixed Fee amount equivalent to the percentage of the completion of work, as determined solely and conclusively by the COUNTY, contemplated by this Agreement.

(c) If the termination is due to the failure of the CONSULTANT to fulfill its Agreement obligations, the COUNTY may take over the work and prosecute the same to completion by other Agreements or otherwise. In such case, the CONSULTANT shall be liable to the COUNTY for all reasonable additional costs occasioned to the COUNTY thereby. The CONSULTANT shall not be liable for such additional costs if the failure to perform the Agreement arises without any fault or negligence of the CONSULTANT; provided, however, that the CONSULTANT shall be responsible and liable for the actions of its subcontractors, agents, employees and persons and entities of a similar type or nature. Such causes may include acts of God or of the public enemy, acts of the COUNTY in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the failure to perform must be beyond the control and without any fault or negligence of the CONSULTANT.

(d) If, after notice of termination for failure to fulfill its Agreement obligations, it is determined that the CONSULTANT had not so failed, the termination shall be conclusively deemed to have been effected for the convenience of the COUNTY. In such event, adjustment in the Agreement price shall be made as provided in subsection (b) of this Section.

(e) The rights and remedies of the COUNTY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Agreement.

**SECTION 12. AGREEMENT AND WORK ORDER IN CONFLICT.** Whenever the terms of this Agreement conflict with any Work Order issued pursuant to it, the Agreement shall prevail.

**SECTION 13. EQUAL OPPORTUNITY EMPLOYMENT.** The CONSULTANT agrees that it will not discriminate against any employee or applicant for

employment for work under this Agreement because of race, color, religion, sex, age, disability, or national origin and will take steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, disability, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**SECTION 14. NO CONTINGENT FEES.** The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from award or making of this Agreement. For the breach or violation of this provision, the COUNTY shall have the right to terminate the Agreement at its sole discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**SECTION 15. CONFLICT OF INTEREST.**

(a) The CONSULTANT agrees that it will not contract for or accept employment for the performance of any work or service with any individual, business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY.

(b) The CONSULTANT agrees that it will neither take any action nor engage in any conduct that would cause any COUNTY employee to

violate the provisions of Chapter 112, Florida Statutes, relating to ethics in government.

(c) In the event that CONSULTANT causes or in any way promotes or encourages a COUNTY officer, employee, or agent to violate Chapter 112, Florida Statutes, the COUNTY shall have the right to terminate this Agreement.

**SECTION 16. ASSIGNMENT.** This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the other party and in such cases only by a document of equal dignity herewith.

**SECTION 17. SUBCONTRACTORS.** In the event that the CONSULTANT, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with services covered by this Agreement, the CONSULTANT must first secure the prior express written approval of the COUNTY. If subcontractors or other professional associates are required in connection with the services covered by this Agreement, CONSULTANT shall remain fully responsible for the services of subcontractors or other professional associates.

**SECTION 18. INDEMNIFICATION OF COUNTY.** The CONSULTANT agrees to hold harmless, replace, and indemnify the COUNTY, its commissioners, officers, employees, and agents against any and all claim, losses, damages or lawsuits for damages, arising from the negligent, reckless, or intentionally wrongful provision of services hereunder by the CONSULTANT, whether caused by the CONSULTANT or otherwise.

**SECTION 19. INSURANCE.**

(a) GENERAL. The CONSULTANT shall at the CONSULTANT'S own cost, procure the insurance required under this Section.

(1) The CONSULTANT shall furnish the COUNTY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required by this Section (Professional Liability, Workers' Compensation/Employer's Liability and Commercial General Liability). The COUNTY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy. The Certificate of Insurance shall provide that the COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. Until such time as the insurance is no longer required to be maintained by the CONSULTANT, the CONSULTANT shall provide the COUNTY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided.

(2) The Certificate shall contain a statement that it is being provided in accordance with the Agreement and that the insurance is in full compliance with the requirements of the Agreement. In lieu of the statement on the Certificate, the CONSULTANT shall, at the option of the COUNTY submit a sworn, notarized statement from an authorized representative of the insurer that the Certificate is being provided in accordance with the Agreement and that the insurance is in full compliance with the requirements of the Agreement. **The Certificate shall have this Agreement number clearly marked on its face.**

(3) In addition to providing the Certificate of Insurance, if required by the COUNTY, the CONSULTANT shall, within thirty (30) days after receipt of the request, provide the COUNTY with a certified copy of each of the policies of insurance providing the coverage required by this Section.

(4) Neither approval by the COUNTY nor failure to disapprove the insurance furnished by a CONSULTANT shall relieve the CONSULTANT of the CONSULTANT'S full responsibility for performance of any obligation including CONSULTANT indemnification of COUNTY under this Agreement.

(b) INSURANCE COMPANY REQUIREMENTS. Insurance companies providing the insurance under this Agreement must meet the following requirements:

(1) Companies issuing policies other than Workers' Compensation, must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.

(2) In addition, such companies other than those authorized by Section 440.57, Florida Statutes, shall have and maintain a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

(3) If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: 1) lose its Certificate of Authority, 2) no longer comply with Section 440.57, Florida Statutes, or 3) fail to maintain the requisite Best's Rating and Financial Size Category, the CONSULTANT shall, as soon as the CONSULTANT has knowledge of any such circumstance, immediately notify the COUNTY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as the CONSULTANT has replaced the unacceptable insurer with an insurer acceptable to the COUNTY the CONSULTANT shall be deemed to be in default



of this Agreement.

(c) SPECIFICATIONS. Without limiting any of the other obligations or liability of the CONSULTANT, the CONSULTANT shall, at the CONSULTANT'S sole expense, procure, maintain and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this subsection. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by the CONSULTANT and shall be maintained in force until the Agreement completion date. The amounts and types of insurance shall conform to the following minimum requirements.

(1) Workers' Compensation/Employer's Liability.

(A) The CONSULTANT'S insurance shall cover the CONSULTANT for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. The CONSULTANT will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both the CONSULTANT and its subcontractors are outlined in subsection (c) below. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act and any other applicable federal or state law.

(B) Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured

under Part One of the standard Workers' Compensation Policy.

(C) The minimum amount of coverage under Part Two of the standard Workers' Compensation Policy shall be:

\$ 500,000.00	(Each Accident)
\$1,000,000.00	(Disease-Policy Limit)
\$ 500,000.00	(Disease-Each Employee)

(2) Commercial General Liability.

(A) The CONSULTANT'S insurance shall cover the CONSULTANT for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability.

(B) The minimum limits to be maintained by the CONSULTANT (inclusive of any amounts provided by an Umbrella or Excess policy) shall be as follows:

	<u>LIMITS</u>
General Aggregate	\$Three (3) Times the Each Occurrence Limit
Personal & Advertising Injury Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

(3) Professional Liability Insurance. The CONSULTANT shall carry limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00).

(d) COVERAGE. The insurance provided by CONSULTANT pursuant to this Agreement shall apply on a primary basis and any other insurance or self-insurance maintained by the COUNTY or the COUNTY'S officials, officers, or employees shall be excess of and not contributing with the insurance provided by or on behalf of the CONSULTANT.

(e) OCCURRENCE BASIS. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Professional Liability insurance policy must either be on an occurrence basis, or, if a claims-made basis, the coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

(f) OBLIGATIONS. Compliance with the foregoing insurance requirements shall not relieve the CONSULTANT, its employees or agents of liability from any obligation under a Section or any other portions of this Agreement.

**SECTION 20. ALTERNATIVE DISPUTE RESOLUTION (ADR).**

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY ADR procedures prior to filing suit or otherwise pursuing legal remedies. COUNTY ADR procedures for proper invoice and payment disputes are set forth in Section 55.1, "Prompt Payment Procedures," Seminole County Administrative Code. Contract claims include all controversies, except disputes addressed by the "Prompt Payment Procedures," arising under this Agreement with ADR procedures set forth in Section 220.106, "Contract Claims," Seminole County Code.

(b) CONSULTANT agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in the COUNTY ADR procedures set forth in subsection (a) above of which the CONSULTANT had knowledge and failed to present during the COUNTY ADR procedures.

(c) In the event that COUNTY ADR procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall

exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

**SECTION 21. REPRESENTATIVES OF THE COUNTY AND THE CONSULTANT.**

(a) It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement will arise. The COUNTY, upon request by the CONSULTANT, shall designate in writing and shall advise the CONSULTANT in writing of one (1) or more of its employees to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. The designated representative shall have the authority to transmit instructions, receive information and interpret and define the COUNTY'S policy and decisions pertinent to the work covered by this Agreement.

(b) The CONSULTANT shall, at all times during the normal work week, designate or appoint one or more representatives of the CONSULTANT who are authorized to act in behalf of and bind the CONSULTANT regarding all matters involving the conduct of the performance pursuant to this Agreement and shall keep the COUNTY continually and effectively advised of such designation.

**SECTION 22. 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 or referred to in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral

or written.

**SECTION 23. MODIFICATIONS, AMENDMENTS OR ALTERATIONS.** 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.

**SECTION 24. INDEPENDENT CONTRACTOR.** It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties, or as constituting the CONSULTANT (including its officers, employees, and agents) the agent, representative, or employee of the COUNTY for any purpose, or in any manner, whatsoever. The CONSULTANT is to be and shall remain forever an independent contractor with respect to all services performed under this Agreement.

**SECTION 25. EMPLOYEE STATUS.** Persons employed by the CONSULTANT in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the COUNTY'S officers and employees either by operation of law or by the COUNTY.

**SECTION 26. SERVICES NOT PROVIDED FOR.** No claim for services furnished by the CONSULTANT not specifically provided for herein shall be honored by the COUNTY.

**SECTION 27. PUBLIC RECORDS LAW.** CONSULTANT acknowledges COUNTY'S obligations under Article I, Section 24, Florida Constitution and Chapter 119, Florida Statutes, to release public records to members of the public upon request. CONSULTANT acknowledges that COUNTY is required to comply with Article I, Section 24, Florida Constitution and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this

Agreement.

**SECTION 28. COMPLIANCE WITH LAWS AND REGULATIONS.** In providing all services pursuant to this Agreement, the CONSULTANT shall abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement, and shall entitle the COUNTY to terminate this Agreement immediately upon delivery of written notice of termination to the CONSULTANT.

**SECTION 29. NOTICES.** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or 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 shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

**FOR COUNTY:**

Public Works Department  
520 W. Lake Mary Blvd., Ste 200  
Sanford, FL 32773

**FOR CONSULTANT:**

Infrastructure Management Services, Inc.  
1895-D Rohlwing Rd.  
Rolling Meadows, IL 60008

**SECTION 30. RIGHTS AT LAW RETAINED.** The rights and remedies of the COUNTY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

**IN WITNESS WHEREOF,** the parties hereto have made and executed this Agreement on the date below written for execution by the COUNTY.

ATTEST:

INFRASTRUCTURE MANAGEMENT  
SERVICES, INC.

\_\_\_\_\_  
, Secretary

(CORPORATE SEAL)

By: \_\_\_\_\_  
, President

Date: \_\_\_\_\_

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
CARLTON HENLEY, Chairman

Date: \_\_\_\_\_

For use and reliance  
of Seminole County only.

Approved as to form and  
legal sufficiency.

As authorized for execution by  
the Board of County Commissioners  
at their \_\_\_\_\_, 20\_\_\_\_  
regular meeting.

\_\_\_\_\_  
County Attorney

AC/lpk  
2/25/05  
M-485

3 Attachments:

Exhibit "A" - Scope of Services  
Exhibit "B" - Sample Work Order