

Contract No. CN08-100
Bid/RFP No.: NC07-043

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT made and entered into this 14th day of May 2008, by and between the Board of County Commissioners of Nassau County, a political subdivision of the State of Florida, hereinafter referred to as "County", and Passero Associates, LLC a Florida Corporation, whose principle office address is located at 13453 N. Main Street, Suite 106, Jacksonville, Florida 32218, hereinafter referred to as "Consultant":

WHEREAS, the County requires certain professional services in connection with projects approved within Nassau County's Capital Improvement Plan (CIP); and

WHEREAS, the Consultant desires to render certain Preliminary Engineering and Design services, and has the qualifications, experience, staff and resources to perform those services; and

WHEREAS, the County, through a competitive 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 to provide Preliminary Engineering and Design Services for certain projects approved in Nassau County's CIP.

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

ARTICLE 1 - EMPLOYMENT OF CONSULTANT

The County hereby agrees to engage Consultant, and Consultant hereby agrees to perform certain projects as agreed by the parties. The Scope of Services, compensation, and date of completion for said projects shall be fully set forth in a Work Authorization signed by the parties upon the commencement of each individual project.

ARTICLE 2 – PROPOSED PROJECTS

2.1 The parties intend to negotiate the Work Authorizations (including compensation, completion date and Scope of Services) for two (2) projects on Nassau County's CIP dated September 24, 2007; to wit:

- Mill and resurface of CR108 from CR121 at Carroll's Corner to West First Street in Hilliard, Nassau County, Florida; and
- Preliminary Engineering for the Reconstruction of Chester Road from AIA to Roses Bluff Road in Yulee, Nassau County, Florida.

Upon said Work Authorizations being negotiated by the Consultant and the Engineering Services Director, each Work Authorization must be presented to the Board of County Commissioners for approval and execution prior to the commencement of the project.

2.2 Where it is deemed to be in the best interest of the County, additional Work Authorizations for projects of the specific nature as contemplated herein may be executed by the parties. No Work Authorization may be issued unless it is for Preliminary Engineering and Design Services for projects on the County's CIP.

ARTICLE 3 - SCOPE OF SERVICES

Consultant shall provide Preliminary Engineering & Design services in accordance with the Scope of Services set forth in each Work Authorization. Each Work Authorization shall set forth a specific Scope of Services, the amount of compensation and the required completion date.

ARTICLE 4 - THE COUNTY'S RESPONSIBILITY

Except as otherwise provided herein or in any specific Work Authorization, the County's responsibilities are to furnish required information, services, render approvals and decisions as necessary for the orderly progress of Consultant's services. The County hereby designates the Director of Engineering Services to act on the County's behalf with respect to the negotiating each Work Authorization, and overseeing Consultant's performance of each Work Authorization. The Director of Engineering Services, under the supervision of the County Coordinator, shall have complete authority to transmit instructions, receive information, interpret and define County's policies and decisions with respect to materials, elements and systems pertinent to Consultant's services.

ARTICLE 5 - TERM OF AGREEMENT

The term of this Agreement shall be for a three year period beginning on the date of its complete execution. The performance period of this Agreement may be extended upon mutual agreement between both parties. In the event that an outstanding Work Authorization exists at the expiration of the term of this Agreement or an extension thereto, the term of this Agreement shall extend to coincide with the completion date of any outstanding Work Authorization unless otherwise provided by

the parties. Any extension of performance period under this provision shall be in one (1) year increments. Total contract length and individual one (1) year extensions shall be in the County's best interest and sole discretion. Any Agreement or amendment to the Agreement shall be subject to fund availability and mutual written agreement between the County and Consultant.

ARTICLE 6 - COMPENSATION

6.1 Labor Unit rates shall be established at the beginning of this Agreement and may be adjusted annually upon written agreement of the parties beginning with the next assigned project issued after the anniversary date of the Agreement. The labor unit rates are set forth in the "Fee Schedule" attached hereto as Exhibit "A".

6.2 The County shall pay Consultant in accordance with the provisions contained in each Work Authorization. The compensation for each project, as set forth in individual Work Authorizations, shall be based on the Fee Schedule.

6.3 Consultant shall prepare and submit to the Director of Engineering Services, for approval, a monthly invoice for the services rendered under this Agreement. In the event, no services are rendered for a particular month, but a Work Authorization is outstanding, Consultant shall generate an invoice for that month showing that no services were rendered. The invoice shall show a summary of fees with an accrual of the total fees billed and credits for portions paid previously.

All invoices shall be accompanied by a report identifying the nature and progress of the work performed. The County reserves the right to withhold payment to Consultant for failure to perform the work in accordance with the provisions of this

Agreement, and the County shall promptly notify Consultant if any invoice or report is found to be unacceptable and will specify the reasons therefor.

Invoices for services shall be paid in accordance with the Florida Prompt Payment Act.

6.4 All representation, indemnifications, warranties and guaranties made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, will survive final payment and termination or completion of this Agreement.

6.5 Final Invoice per Project: In order for both parties herein to close their books and records, the Consultant will clearly state "Final Invoice" on the Consultant's final/last billing to the County, this indicates that all services have been performed and all charges and costs have been invoiced to the County and that there is no further work to be performed on the specific project.

6.6 Each project shall have its own specific value on a "stand alone" basis.

ARTICLE 7 - STANDARD OF CARE

Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided by a professional under similar circumstances and Consultant shall, at no additional cost to the County, re-perform services which fail to satisfy the foregoing standard of care.

ARTICLE 8 - DOCUMENTS

The documents which comprise this Agreement between the County and the Consultant are attached hereto and made a part hereof and consist of the following:

8.1 This Agreement;

8.2 Fee Schedule attached hereto as Exhibit "A"

8.3 Any written Work Authorizations, which the parties execute at a date in the future.

ARTICLE 9 - EQUAL OPPORTUNITY EMPLOYMENT

In connection with the work to be performed under this Agreement, Consultant agrees to comply with the applicable provisions of State and Federal Equal Employment Opportunity statutes and regulations.

ARTICLE 10 - TRUTH-IN-NEGOTIATION/PUBLIC ENTITY CRIMES AFFIDAVIT

Consultant certifies that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the county determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. Consultant represents that it has furnished a Public Entity Crimes Affidavit pursuant to Section 287.133, Florida Statutes.

ARTICLE 11 - INDEMNIFICATION

11.1 Consultant shall indemnify and hold harmless the County, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of this agreement. The Consultant shall not indemnify or hold harmless the County for any negligence of the County, its employees, officers, directors, or agents.

11.2 Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

11.3 County reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Consultant under the indemnification agreement. Nothing contained herein is intended nor shall it be construed to waive County's rights and immunities under the common law or Florida Statute 768.28 as amended from time to time.

ARTICLE 12 - INDEPENDENT CONTRACTOR

Consultant undertakes performance of the services as an independent contractor under this Agreement, and shall be wholly responsible for the methods of performance. The County shall have no right to supervise the methods used, but the County shall have the right to observe such performance. Consultant shall work closely with the County in performing services under this Agreement.

ARTICLE 13 – EXTENT OF AGREEMENT

13.1 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.

13.2 This Agreement may only be amended, supplemented, modified, changed or canceled by a duly executed written instrument.

ARTICLE 14 - COMPLIANCE WITH LAWS

In performance of the services, Consultant will comply with applicable regulatory requirements including federal, state, and local laws, rules regulations, orders, codes, criteria and standards.

ARTICLE 15 - INSURANCE

15.1 The Consultant shall purchase and maintain such commercial (occurrence form) or comprehensive general liability, workers compensation, professional liability, and other insurance as is appropriate for the services being performed hereunder by Consultant, its employees or agents. The amounts and types of insurance shall conform to the following minimum requirements.

- 15.1.1 Worker's Compensation:** Coverage must apply for all employees and statutory limits in compliance with the applicable state and federal laws. In addition, the policy must include the following:
- a. Employer's Liability with a minimum limit per accident in accordance with statutory requirements.
 - b. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide County with ten (10) days' written notice of cancellation and/or restriction.

- 15.1.2 Comprehensive General Liability:** Coverage must include:
- a. \$1,000,000.00 combined limit per occurrence for bodily injury, personal injury and property damage; \$2,000,000 general aggregate.

- b. Contractual coverage applicable to this specific contract, including any hold harmless and/or indemnification agreement.
- c. Additional Insured. County is to be specifically included as an additional insured.
- d. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide County with ten (10) days' written notice of cancellation and/or restriction.

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

- a. \$1,000,000 combined single limit per accident for bodily injury and property damage.
- b. Owned Vehicles
- c. Hired and Non-Owned Vehicles
- d. Employee Non-Ownership
- e. Additional Insured. County is to be specifically included as an additional insured.
- f. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide County with ten (10) days' written notice of cancellation and/or restriction.

15.1.4 Umbrella policy: Coverage must be afforded on a form no more restricted than the latest Umbrella Policy filed by Insurance Services Offices and must include:

- a. \$5,000,000 per occurrence
- b. General Liability underlying coverage: \$1,000,000 for bodily injury, personal injury and property damage. General Aggregate of \$2,000,000.
- c. Auto liability: Underlying Combined single limit of \$1,000,000.
- d. Employers' Liability: Underlying limit 5000,000 / \$500,000 / \$500,000.

15.1.5 Additional Insured. County is to be specifically included as an additional insured.

15.1.6 Notice of Cancellation and/or Restriction. The policy must be endorsed to provide County with ten (10) day's written notice of cancellation and/or restriction.

15.2 Certificates of Insurance evidencing the insurance coverage specified in this Section shall be filed with the County. The Certificates of Insurance shall be filed with County before this Agreement is deemed approved by the County. The required Certificates of Insurance not only shall name types of policies provided, but also shall refer specifically to this Agreement. All the policies of insurance so required of Consultant except workers compensation and professional liability insurance shall be endorsed to include as additional insured the County, its officers, employees, and

agents to the extent of the County's interest arising from any contract agreement between County and Consultant. If the initial insurance expires prior to completion of the work, renewal Certificates of Insurance shall be furnished thirty (30) days prior to the date of their expiration.

15.3 Insurance coverage shall be placed with insurers or self-insurance funds, satisfactory to the County, licensed to do business in the State of Florida and with a resident agent designated for the service of process. All insurers shall have an "A" policyholder's rating and a financial rating of at least Class IX in accordance with the most current Best's rating. Consultant shall provide the County with financial information concerning any self insurance fund insuring Consultant. At the County's option, a Best's rating or Self-Insurance Fund financial information may be waived.

ARTICLE 16 – ACCESS TO PREMISES

The County shall be responsible for providing access to all project sites, and for providing project-specific information.

ARTICLE 17 - TERMINATION OF AGREEMENT

17.1 Termination for Convenience: This Agreement may be terminated by the County for convenience, upon thirty (30) days of written notice to Consultant. In such event, the Consultant shall be paid its compensation for services performed prior to the termination date. In the event that the Consultant abandons this Agreement or causes it to be terminated, Consultant is liable to the County for any and all loss pertaining to this termination.

17.2 Default by Consultant: In addition to all other remedies available to the County, the County may terminate this Agreement for cause should the

Consultant neglect, fail to perform, or observe any of the terms, provisions, conditions, or requirements herein contained. Prior to termination the County shall provide written notice of the specific conditions warranting default, and the County shall allow thirty (30) days for Consultant to cure.

ARTICLE 18 - NONDISCLOSURE OF PROPRIETARY INFORMATION

Consultant shall consider all information provided by County and all reports, studies, calculations, and other documentation resulting from the Consultant's performance of the Services to be proprietary unless such information is available from public sources. Consultant shall not publish or disclose proprietary information for any purpose other than the performance of the services without the prior written authorization of County or in response to legal process.

ARTICLE 19 - UNCONTROLLABLE FORCES

19.1 Neither the County nor Consultant shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

19.2 Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable,

and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 20 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Nassau County.

ARTICLE 21 - MISCELLANEOUS

21.1 Non-waiver: A waiver by either County or Consultant of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

21.2 Severability: Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not

constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

21.3 The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

21.4 Dispute Resolution: Any dispute arising under this Contract shall be addressed by the representatives of the County and the Consultant as set forth herein. Disputes shall be set forth in writing to the County Coordinator with a copy to the Department Head or Consultant, depending on which party initiates the dispute, and provided by overnight mail, UPS, FedEx, or certified mail. A response shall be provided in the same manner prior to the initial meeting with the County Coordinator, the Department Head (or their designee), and a representative of the Consultant. This initial meeting shall take place no more than thirty (30) days from the written notification of the dispute addressed to the County Coordinator.

If the dispute is not settled at the initial meeting, the County Coordinator shall immediately notify the County Attorney. The Department Head (or his/her designee), the County Attorney, the County Coordinator, and the Department Head (or their designee(s)) shall meet with the Consultant's representative(s) within thirty (30) days of the County Coordinator's notification to the County Attorney of the continued dispute.

If there is no satisfactory resolution, the claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, shall be submitted to mediation in accordance with

mediation rules as established by the Florida Supreme Court. Mediators shall be chosen by the County and the cost of mediation shall be borne by the Consultant. If either party initiates a Court proceeding, and the Court orders, or the parties agree to, mediation, the cost of mediation shall be borne by the Consultant. Consultant shall not stop work during the pendency of mediation or dispute resolution. No litigation shall be initiated unless and until the procedures set forth herein are followed.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

22.1 The County and Consultant each binds itself and its director, officers, partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives.

22.2 Consultant shall not assign any rights or delegate any duties contained within this Agreement or any Work Authorization made a part hereof, without the prior written consent. In the event the parties agree to an assignment of rights or delegation of duties, then assignee shall be bound and shall assume all the obligations, duties and responsibilities that Consultant owes County. No such assignment or delegation shall release the Consultant of its obligations, duties and responsibilities to the County.

ARTICLE 23 - 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 any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 24 - OWNERSHIP OF DOCUMENTS

Consultant shall be required to work in harmony with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the County upon completion for its use and distribution as may be deemed appropriate by the County.

ARTICLE 25 - FUNDING

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the County Commission of the County of Nassau in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

ARTICLE 26 - NOTICE

26.1 Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice either delivered in person, sent by U.S. Certified Mail, U.S. Express Mail, air or ground courier services, or by messenger service, as follows:

COUNTY

Contract Manager
Nassau County Contract Management
96135 Nassau Place, Suite 6
Yulee, Florida 32097

With a copy to the County Attorney at the same address.

CONSULTANT:

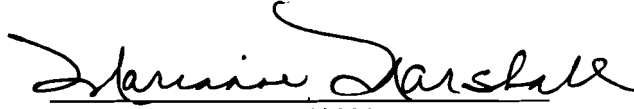
Andrew Holesko, Vice President
PASSERO ASSOCIATES, LLC.
13453 North Main Street STE 106
Jacksonville, FL 32218
904/ 757-6106

26.2 Notices shall be effective when received at the address specified above. Changes in the respective addresses to which such notice may be directed may be made from time to time by any party by written notice to the other party. Facsimile is acceptable notice effective when received, however, facsimiles received (i.e.; printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

26.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and County.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

NASSAU COUNTY,
BOARD OF COUNTY COMMISSIONERS


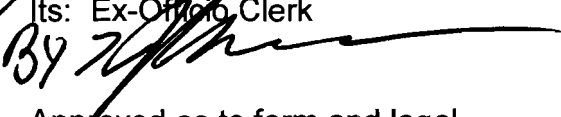


MARIANNE MARSHALL
Its: Chair

Date: 05/14/08

ATTEST TO CHAIR
SIGNATURE *only*

REVIEWED BY GENE KNAGA
CHIEF DEPUTY COMPLIANCE / ACCOUNTABILITY


JOHN A. CRAWFORD
Its: Ex-Officio Clerk
BY 

 DATE 5/14/08

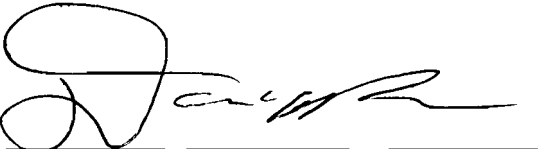
Approved as to form and legal
sufficiency:



DAVID A. HALLMAN
Its: County Attorney

ATTEST:

PASSERO ASSOCIATES



(Corporate Secretary)

David Passero
Type/Print Name of Corporate Secy.

(CORPORATE SEAL)



Signature of President/Owner

Vice President
Type/Print Name of President/Owner

Date: 05/14/08

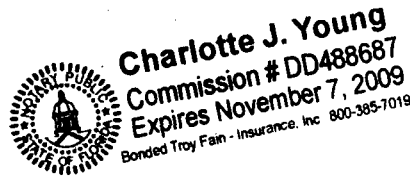
CORPORATE ACKNOWLEDGEMENT

STATE OF Florida :
:SS
COUNTY OF Nassau :

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Andrew Holesko, Of, Passero Associates A Florida Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this 14 day of May, 2008.

Charlotte J. Young
Signature of Notary Public
State of Florida at Large



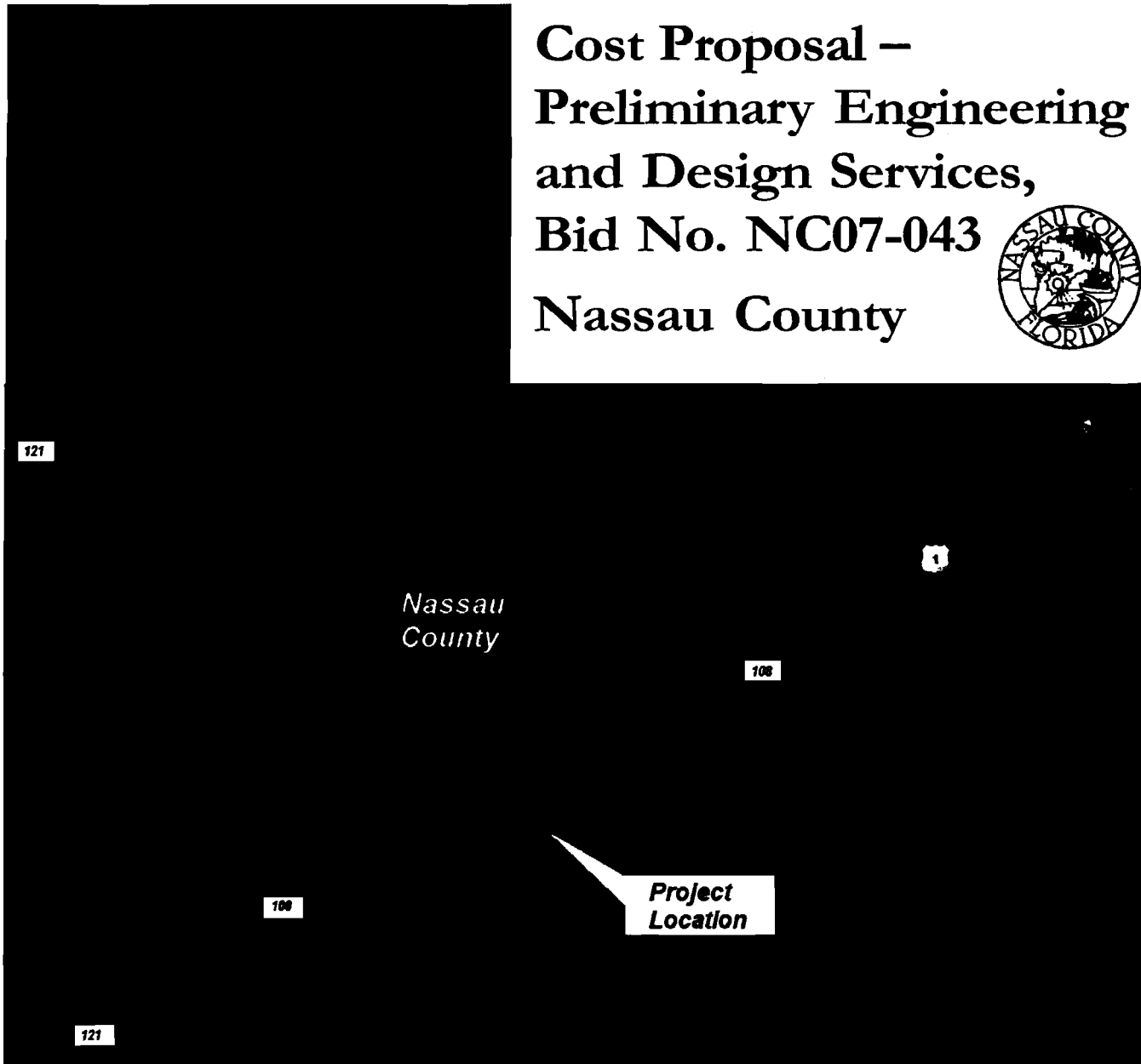
Charlotte J. Young
Print, Type or Stamp
Name of Notary Public

- Personally known to me or
- Produced Identification

Type of I.D. Produced

- DID take an oath, or
- DID NOT take an oath.

**Cost Proposal –
Preliminary Engineering
and Design Services,
Bid No. NC07-043
Nassau County**



February 12, 2008

Passero Associates, L.L.C.

13453 N. Main Street - Suite 106
Jacksonville, FL 32218
Office: 904 757 6106
Toll Free: 800 836 0365
Fax: 904-757-6107
www.passero.com

in association with:

Ghyabi & Associates

Cal Tech Testing

Manzie & Drake Land Surveying



Cost Proposal

Preliminary Engineering and Design Services Bid No. NC07-043

1. Passero Associates, LLC

<u>Staff</u>	<u>Direct Hourly Labor Rate</u>	<u>Range of Billing Rates</u>
Program Manager	63.97	185 - 195
Senior Engineer	43.27	110 - 130
Design Engineer	37.71	80 - 90
CADD	26.45	75 - 80
Technical Typist	18.50	55 - 60

Labor Multiplier Calculation:

Overhead Factor	1.61
Direct Labor	1.00
Profit	15%
Multiplier	$(1 + 1.61) \times 1.15 = 3.0$

2. Ghyabi and Associates

<u>Staff</u>	<u>Direct Hourly Labor Rate</u>	<u>Range of Billing Rates</u>
Chief Engineer	61.25	194 - 228
Project Manager	56.61	175 - 185
Senior Engineer	48.03	150 - 160
Project Engineer	38.54	115 - 125
Engineer	31.40	95 - 105
CADD	28.00	88 - 95
Technical Typist	20.10	60 - 65

Labor Multiplier Calculation:

Overhead Factor	1.756
Direct Labor	1.00
Profit	15%
Multiplier	$(1.756 + 1) \times 1.15 = 3.17$



Cost Proposal

Preliminary Engineering and Design Services Bid No. NC07-043

3. Cal-Tech Testing, Inc.

<u>Staff</u>	<u>Direct Hourly Labor Rate</u>	<u>Range of Billing Rates</u>
Senior Engineer	40.87	185
Project Manager	39.23	135
Project Engineer	34.42	125
CADD	17.50	80
Engineering Tech	17.00	70 - 80

Labor Multiplier Calculation:

Overhead Factor	3.38
Direct Labor	1.00
Profit	20%
Multiplier	$(3.38 + 1) \times 1.20 = 5.26$

For budgeting purposes, you should estimate that the geotechnical investigation will range from \$9,000 - \$11,500 for CR 108.

4. Manzie & Drake

<u>Staff</u>	<u>Direct Hourly Labor Rate</u>	<u>Range of Billing Rates</u>
Professional LS	21.43	75
CADD	18.57	65
3 Man Survey Crew	35.71	125
2 Man Survey Crew	24.28	85

Labor Multiplier Calculation:

Overhead Factor	2.04
Direct Labor	1.00
Profit	15%
Multiplier	$(1 + 2.04) \times 1.15 = 3.05$

