

**Agenda Item #: 3-C-12**

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

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<b>Meeting Date:</b>	August 19, 2008	<input checked="" type="checkbox"/>	<b>Consent</b>	<input type="checkbox"/>	<b>Regular</b>
		<input type="checkbox"/>	<b>Workshop</b>	<input type="checkbox"/>	<b>Public Hearing</b>
<b>Department:</b>					
<b>Submitted By:</b>	Engineering & Public Works Department				
<b>Submitted For:</b>	Roadway Production Division				

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**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to approve:** An Agreement with Tierra, Inc. to provide the necessary professional testing lab services on a task order basis, for Countywide projects, as required.

**SUMMARY:** This Agreement will provide the necessary professional testing lab services throughout Palm Beach County (County) for all user departments. At the option of the County, this Agreement can be renewed annually for a period of one year, with a maximum of two renewals.

Countywide (PK)

**Background and Justification:** On May 21, 2008, the Consultant's Competitive Negotiations Act Selection Committee selected Tierra, Inc. (Tierra) and, in accordance with PPM No. CW-O-048, the Board of County Commissioners (Board) was notified of the selection on May 29, 2008. The County now desires Tierra to provide the necessary professional services. The Small Business Enterprise (SBE) goal for the Contract is 15%. The SBE participation committed for this Contract by Tierra is 100% overall.

After reviewing the attached Agreement and finding it in proper order, staff recommends Board approval. This transaction will maintain the continuous process of professional services required by the County.

**Attachments:**

1. Agreement with Exhibits and Certificate of Insurance (2)

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**Recommended by:** *Dennis A. Fernandez* 7/21/08  
Division Director Date

**Approved By:** *D. T. Webb* 7/23/08  
County Engineer Date

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	-0-	-0-	-0-	-0-	-0-
# ADDITIONAL FTE	-0-	-0-	-0-	-0-	-0-
POSITIONS (CUMULATIVE)	-0-	-0-	-0-	-0-	-0-

Is Item Included in Current Budget? Yes  No

#### Budget Account No.:

Fund	Agency	Organization	Object	Amount
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### B. Recommended Sources of Funds/Summary of Fiscal Impact:

This item has no fiscal impact.

C. Departmental Fiscal Review: \_\_\_\_\_

*[Handwritten Signature]*

## III. REVIEW COMMENTS

### A. OFMB Fiscal and/or Contract Administration Comments:

<p><u>atwillhitz 7.24.08</u> OFMB SN 7/24/08 7/22/08</p>	<p><u>Jim J. [Signature] 7/25/08</u> Contract Administration E. Jones 7/25/08</p>
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This Contract complies with our contract review requirements.

### B. Legal Sufficiency:

Paul F. [Signature] 7/28/08  
Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
Department Director

This summary is not to be used as a basis for payment.

ATTACHMENT 1

**STANDARD FORM OF AGREEMENT  
BETWEEN  
PALM BEACH COUNTY AND CONSULTANT  
FOR  
PROFESSIONAL SERVICES**

This is an Agreement made as of \_\_\_\_\_, 2008 between **Palm Beach County, Florida (COUNTY)** and **Tierra, Inc. (ANNUAL CONSULTANT)**, an engineering firm having an office and a place of business at 2765 Vista Parkway, Suite 10, West Palm Beach, Florida 33411, and having Federal Tax I.D. #59-3154723. The COUNTY intends to have the ANNUAL CONSULTANT provide testing lab services required for County User Departments, on an as needed basis (hereinafter called the PROJECT).

The COUNTY and ANNUAL CONSULTANT in consideration of their mutual covenants herein agree in respect of the performance of professional testing lab services by ANNUAL CONSULTANT and the payment for those services by COUNTY as set forth below.

**SECTION 1 - BASIC SERVICES OF ANNUAL CONSULTANT**

1.1 General

1.1.1 The ANNUAL CONSULTANT shall perform professional design services in connection with the PROJECT as hereinafter stated which shall include normal testing lab services, more particularly described in Exhibit "A" (Scope of Services).

1.1.2 The ANNUAL CONSULTANT shall prepare all plans in accordance with Palm Beach County Thoroughfare Design Procedures, current standards adopted by AASHTO, and the Florida Department of Transportation Manual of Uniform Minimum Standards, and all other applicable professional and technical standards. Plans shall be based on the North American Datum of 1983 (NAD 83) 1990 Adjustment and the North American Vertical Datum of 1988 (NAVD 88). They shall be accurate, legible, complete in design, drawn to scale, and shall be suitable for bidding purposes, unless otherwise stated in Exhibit "A".

1.1.3. The ANNUAL CONSULTANT has, during the selection and negotiation process which has preceded this agreement, represented to the COUNTY that the ANNUAL CONSULTANT is possessed of that level of skill, knowledge, experience and expertise that is commensurate with engineering firms of national repute in the areas of practice required for this project. The ANNUAL CONSULTANT acknowledges that the COUNTY has relied on the ANNUAL CONSULTANT'S representations of skill, knowledge, experience and expertise. By executing this contract, the ANNUAL CONSULTANT agrees that the ANNUAL CONSULTANT will exercise that degree of care, knowledge, skill and ability as other engineering firms possessing the degree of skill, knowledge, experience and expertise which the ANNUAL CONSULTANT has claimed. The ANNUAL CONSULTANT shall perform such duties as may be assigned without neglect. The ANNUAL CONSULTANT accepts the relationship of trust and confidence established by this Agreement, and covenants with the COUNTY to cooperate with the COUNTY and to utilize the ANNUAL CONSULTANT'S skill, efforts and judgment commensurate with engineering firms of national repute in the areas of practice required for this project. The ANNUAL CONSULTANT agrees to perform each assignment in an efficient and economical manner consistent with the COUNTY'S interests and consistent with the COUNTY'S stated objectives and recognized professional engineering standards.

The ANNUAL CONSULTANT further contracts with the COUNTY to furnish its professional skill and judgment with due care in accordance with applicable Federal, State and local laws, codes and regulations as amended and supplemented which are in effect on the date of this Agreement first written. It is specifically understood that the

Accessibility provisions of the Americans With Disabilities Act (ADA) shall be complied with and incorporated into the project.

1.1.4 Prior to commencement of design, the **ANNUAL CONSULTANT** shall become familiar with the needs of **COUNTY** Microstation standards, obtain any seed or Microstation files, CADD standards, and standard sheets so that Microstation deliverables can be utilized by the **COUNTY**. **ANNUAL CONSULTANT** shall submit electronic files (in Microstation compatible format and Adobe PDF format) of the design, survey, and any related data used for the project, with the final document(s) submittal, or when otherwise directed by **COUNTY**.

1.15 The **ANNUAL CONSULTANT** shall provide to the **COUNTY** all cost summaries/estimates and "Summary of Pay Items" on disk and/or electronic file (as requested). The **ANNUAL CONSULTANT** shall apply descriptions to the pay items as called out in the **COUNTY'S** "Standard Nomenclature" listing, which is available from Roadway Production.

## **SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT**

### **2.1 Services Requiring Authorization in Advance**

If authorized in writing by the **COUNTY'S** authorized representative, the **ANNUAL CONSULTANT** shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.9 inclusive. These services are not included as part of Basic Services except to the extent provided otherwise in the Fee Summary, Exhibit "B". These will be paid for by the **COUNTY**, only when specifically authorized and in accordance with Section 5.

2.1.1. Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the **PROJECT**.

2.1.2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by the **COUNTY**.

2.1.3. Services resulting from significant changes in the general scope, extent or character of the **PROJECT** or its design including, but not limited to, changes in size, complexity, the **COUNTY'S** schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or contract documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond the **ANNUAL CONSULTANT'S** control.

2.1.4. Preparing documents for alternate bids requested by the **COUNTY** for contractor(s) work which is not executed or documents for out-of-sequence work.

2.1.5. Furnishing the services of special consultants for other than the services included in Exhibit "A".

2.1.6. Services during out-of-town travel required of the **ANNUAL CONSULTANT** other than visits to the site or the **COUNTY'S** office as required by Section 1.

2.1.7. Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services.

2.1.8. Preparing to serve or serving as a consultant or witness for the **COUNTY** in any litigation or other legal proceeding involving the **PROJECT**.

2.1.9. Additional services in connection with the **PROJECT**, including services which are to be furnished by the **COUNTY** in accordance with Article 3, and services not otherwise provided for in this Agreement.

### **SECTION 3 - COUNTY'S RESPONSIBILITY**

The **COUNTY** shall do the following in a timely manner so as not to delay the services of the **ANNUAL CONSULTANT**.

- 3.1. Designate in writing a person to act as the **COUNTY'S** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the **COUNTY** policies and decisions with respect to the **ANNUAL CONSULTANT'S** services for the **PROJECT**.
- 3.2. Provide all criteria and full information as to the **COUNTY'S** requirements for the **PROJECT**, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards which the **COUNTY** will require to be included in the drawings and specifications.
- 3.3. Assist the **ANNUAL CONSULTANT** by placing at the **ANNUAL CONSULTANT'S** disposal all available information pertinent to the **PROJECT** including previous reports and any other data relative to design or construction of the **PROJECT**.
- 3.4. Furnish to the **ANNUAL CONSULTANT** the items listed in Exhibit "A".
- 3.5. Arrange for access to and make all provisions for the **ANNUAL CONSULTANT** to enter upon public and private property as reasonably required for the **ANNUAL CONSULTANT** to perform services under this Agreement.
- 3.6. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the **ANNUAL CONSULTANT**, obtain advice of an attorney, insurance counselor and other consultants as the **COUNTY** deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the **ANNUAL CONSULTANT**.
- 3.7. Furnish approvals and permits from all governmental authorities having jurisdiction over the **PROJECT** and such approvals and consents from others as may be necessary for completion of the **PROJECT**.
- 3.8. Providing such legal, accounting, independent cost estimating and insurance counseling services as may be required for the **PROJECT**, and such auditing service as **COUNTY** may require to ascertain how or for what purpose any contractor has used the monies paid to him.
- 3.9. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
- 3.10. Give prompt written notice to the **ANNUAL CONSULTANT** whenever the **COUNTY** observes or otherwise becomes aware of any development that affects the scope or timing of the **ANNUAL CONSULTANT'S** services, or any defect or non-conformance in the work of any contractor.
- 3.11. Furnish, or direct the **ANNUAL CONSULTANT** to provide, Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.
- 3.12. Bear all costs incident to compliance with the requirements of this Section 3.

#### SECTION 4 - PERIODS OF SERVICE

4.1. This is an Annual Agreement for professional testing lab services. This Agreement will commence on the date of Board approval and shall remain in effect for a period of one (1) year from that date. At the option of the COUNTY, this agreement can be renewed for two (2) additional one (1) year terms commencing on the anniversary date of the original agreement approval, if agreed by both parties.

#### SECTION 5 - PAYMENTS TO CONSULTANT

5.1. Methods of Payment for Services and Expenses of the ANNUAL CONSULTANT.

5.1.1. Basic Services: The COUNTY will pay the ANNUAL CONSULTANT an hourly not-to-exceed fee, and/or a lump sum fee, as may be required for each project. The Basic Services (broadly outlined in Exhibit "A") for each project shall be negotiated in accordance with the fees/rates shown in Exhibit "B". The COUNTY shall authorize each project task order fee in writing prior to commencement of the work.

5.1.2. Additional Services: To the extent that additional services under Section 2 hereof are specifically authorized in writing by the COUNTY'S representative, the COUNTY will pay for such additional services in accordance with the following:

5.1.2.1. Actual Salary costs times a factor of 2.99 for services rendered by principals and employees assigned to the PROJECT plus all reimbursable expenses.

5.1.2.2. (DELETED)

5.1.2.3. For services rendered by the ANNUAL CONSULTANT'S principals and employees as consultants or witnesses in any litigation, arbitration or other legal or administrative proceeding in accordance with Paragraph 2.1.8. at the rate of \$800.00 per day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, arbitration or proceeding will be on the basis provided in Paragraph 5.1.2.1).

5.1.3. Reimbursable Expenses: The COUNTY will pay the ANNUAL CONSULTANT the actual costs of all reimbursable expenses incurred in the provision of these services when authorized in writing by the COUNTY.

5.1.4. The terms "Salary Costs" and "Reimbursable Expenses" have the meanings assigned to them in Paragraph 5.4.

5.1.5. Additional services and reimbursable expenses authorizations shall be issued in accordance with Board policy per Resolution Number R-89-633 adopted April 4, 1989.

#### 5.2. Payments

5.2.1. Progress payments to the ANNUAL CONSULTANT shall be due and payable monthly in proportion to the percentage of engineering services approved and accepted by the COUNTY based on said lump sum fee until 90% of the project is completed. There will be no additional payments for Basic Services until all services are completed and accepted by the COUNTY (including permits).

5.2.2. Final payment shall be due and payable to the ANNUAL CONSULTANT upon satisfactory completion of the services described in this Agreement and approval and acceptance of the plans by the COUNTY.

5.2.3. Due to the nature of the work flow and the small size of expected projects to be performed by the ANNUAL CONSULTANT, the COUNTY recognizes that the purpose of withholding retainage may not be applicable for all projects and the COUNTY may waive the requirement upon written request from the ANNUAL CONSULTANT.

5.3. **Other Provisions Concerning Payments**

5.3.1. Records of the ANNUAL CONSULTANT'S Salary Costs pertinent to the ANNUAL CONSULTANT'S compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to the COUNTY on request prior to final payment for the ANNUAL CONSULTANT'S services.

5.3.2 At the end of each one (1) year period and during the renewal process, the unburdened (raw) rates may be adjusted by negotiation as an "equitable adjustment", if the cost of living index (Consumer Price Index (CPI)) supports an increase. However, the multiplier agreed to under the original agreement SHALL NOT be changed.

5.3.3 If the proposed adjustments to the unburdened rates include inflationary increases, the percentage of such increase must be justified as being consistent with prior increases to the employees. This may be accomplished by providing a certified schedule of the employee's wage rates which show annual increases for the TWO (2) previous years, including the "anniversary" date of the increase. This schedule shall clearly distinguish between raises given as a result of promotions, change of job, etc., and other increases (inflationary, cost-of-living, and merit). Wage rate verification should be current payroll registers certified by an Officer of the Company, stating that the rates are accurate. The wage rate information must reference the ANNUAL CONSULTANT'S employee names and job classification to those contained in the proposal.

5.4. **Definitions**

5.4.1. The Salary Costs used as a basis for payment shall mean the actual salaries and wages paid to principals and employees engaged on the PROJECT. Time spent on this PROJECT by stenographers, typists and clerk skills shall not be charged to the PROJECT nor shall any fringe benefits such as social security contributions, unemployment, excise and payroll taxes, workman's compensation, etc., be included in the Salary Costs.

5.4.2. Reimbursable Expenses shall mean the actual expenses of soils testing, printing and similar PROJECT related items when authorized by the COUNTY.

**SECTION 6 - CONSTRUCTION COST AND OPINIONS OF COST**

6.1. **Opinions of Cost**

Since ANNUAL CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, the ANNUAL CONSULTANT'S opinions of probable construction cost provided for herein are to be made on the basis of the ANNUAL CONSULTANT'S experience and qualifications and represent the ANNUAL CONSULTANT'S best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but the ANNUAL CONSULTANT cannot and does not guarantee that proposals, bids or actual construction costs will not vary from opinions of probable cost prepared by the ANNUAL CONSULTANT. If prior to the Bidding or Negotiating Phase, the COUNTY wishes greater assurance as to construction costs, the COUNTY shall employ an independent cost estimator.

**SECTION 7 - GENERAL CONSIDERATION**

7.1. **Termination**

This Agreement may be canceled by the ANNUAL CONSULTANT upon thirty (30) days prior written notice to the COUNTY if, through no fault of the ANNUAL CONSULTANT, the COUNTY fails to cure any material default by the COUNTY in its performance of the terms of this Agreement. This Agreement may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the ANNUAL CONSULTANT. Unless the ANNUAL CONSULTANT is in breach of this Agreement, the ANNUAL

CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of cancellation or termination. In the event of cancellation by the ANNUAL CONSULTANT or termination by the COUNTY, ANNUAL CONSULTANT agrees to waive and make no claim for lost profits or other consequential damages. After receipt of a Termination Notice and except as otherwise directed by the COUNTY, the ANNUAL CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

Should a termination for breach later be declared wrongful, said termination shall be considered and treated as a termination without cause.

## 7.2. DISCLOSURE AND OWNERSHIP OF DOCUMENTS

7.2.1. Upon completion and acceptance of the final work, the ANNUAL CONSULTANT shall furnish to the COUNTY the original drawings, field notes and all documents and materials prepared by and for the COUNTY under this Agreement. The ANNUAL CONSULTANT may keep a reproducible set of the original drawings and shall keep all other data collected during the provision of the services. The COUNTY may, at its expense, obtain copies of any data which the ANNUAL CONSULTANT has accumulated in the process of providing the services on this project tasks. Any reuse without written verification or adaptation by the ANNUAL CONSULTANT for the specific purpose intended will be at the COUNTY'S sole risk and without liability or legal exposure to the ANNUAL CONSULTANT.

7.2.2. All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the ANNUAL CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed or purchased under this Agreement at the COUNTY'S expense shall be, and remain, the COUNTY'S property, and may be reproduced and reused at the discretion of the COUNTY.

7.2.3. The COUNTY and the ANNUAL CONSULTANT shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

7.2.4. All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

## 7.3 Reuse of Documents

Notwithstanding any breach of this Agreement by either party nor the status of payment to the ANNUAL CONSULTANT, nor the COUNTY'S exercise of its rights of termination, it is hereby agreed between the parties that copies of any and all property, work product, documentation, reports, computer systems and software, schedules, graphs, outlines, books, manuals, logs, files, deliverables, photographs, videos, tape recordings or data relating to this Project which have been created as a part of the ANNUAL CONSULTANT'S services, or authorized by the COUNTY as a reimbursable expense, whether generated directly by the ANNUAL CONSULTANT, or by or in conjunction or consultation with any other party whether or not a party to this Agreement, whether or not in privity of



contract with the COUNTY or ANNUAL CONSULTANT, and wherever located shall be the property of the COUNTY.

7.4. **Insurance**

ANNUAL CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. ANNUAL CONSULTANT shall agree to provide the COUNTY with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by ANNUAL CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by ANNUAL CONSULTANT under the contract.

7.4.1 **Commercial General Liability**

ANNUAL CONSULTANT shall maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. ANNUAL CONSULTANT shall provide this coverage on a primary basis.

7.4.2. **Business Automobile Liability**

ANNUAL CONSULTANT shall maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Each Accident for all owned, non-owned and hired automobiles. In the event ANNUAL CONSULTANT doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing ANNUAL CONSULTANT to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. ANNUAL CONSULTANT shall provide this coverage on a primary basis.

7.4.3. **Worker's Compensation Insurance & Employers Liability**

ANNUAL CONSULTANT shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. ANNUAL CONSULTANT shall provide this coverage on a primary basis.

7.4.4. **Professional Liability**

ANNUAL CONSULTANT shall maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than \$1,000,000 Each Claim. When a self-insured retention (SIR) or deductible exceeds \$40,000, COUNTY reserves the right, but not the obligation, to review and request a copy of ANNUAL CONSULTANT'S most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, ANNUAL CONSULTANT shall maintain a Retroactive Date prior to or equal to the effective date of this Contract. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims - made" form. If coverage is provided on a "claims - made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, ANNUAL CONSULTANT shall purchase a SERP with a minimum reporting period not less than 3 years. ANNUAL CONSULTANT shall provide this coverage on a primary basis.

7.4.5. **Additional Insured**

ANNUAL CONSULTANT shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." ANNUAL CONSULTANT shall provide the Additional Insured endorsements coverage on a primary basis.

7.4.6. **Waiver of Subrogation**

ANNUAL CONSULTANT hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then ANNUAL CONSULTANT shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should ANNUAL CONSULTANT enter into such an agreement on a pre-loss basis.

7.4.7. **Certificate(s) of Insurance**

Prior to execution of this Contract, ANNUAL CONSULTANT shall deliver to the COUNTY a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage. The certificate of insurance shall be issued to

Palm Beach County  
c/o Department of Engineering & Public Works  
2300 N. Jog Road, 3<sup>rd</sup> Floor  
West Palm Beach, FL 33411-2745

7.4.8. **Umbrella or Excess Liability**

If necessary, ANNUAL CONSULTANT may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

7.4.9. **Right to Review**

COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

7.5. **Indemnification**

ANNUAL 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 attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the ANNUAL CONSULTANT and other persons employed or utilized by the ANNUAL CONSULTANT in the performance of the contract.

7.6. **Controlling Law and Venue**

This Agreement is to be governed by the laws of the State of Florida. The parties agree that venue for any action which in any way arises out of this Agreement shall only be in a state court of competent jurisdiction located in Palm Beach County, Florida.

7.7. **Successors and Assigns**

7.7.1. The COUNTY and the ANNUAL CONSULTANT each binds itself and the partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the COUNTY nor the ANNUAL CONSULTANT shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the ANNUAL CONSULTANT.

7.7.2. Neither the COUNTY nor the ANNUAL CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the ANNUAL CONSULTANT from employing such independent professional associates and consultants as the ANNUAL CONSULTANT may deem appropriate to assist in the performance of services hereunder.

7.7.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the COUNTY and the ANNUAL CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the COUNTY and the ANNUAL CONSULTANT and not for the benefit of any other party.

7.8. **Subcontracting**

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Agreement. The ANNUAL CONSULTANT is encouraged to seek small business enterprises for participation in subcontracting opportunities. If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the ANNUAL CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

In accordance with Palm Beach County Small Business Enterprise (SBE) Ordinance #2002-064, as amended from time to time, the annual goal for SBE participation for Professional Services is 15.0%. The ANNUAL CONSULTANT has committed to 100.00% for this Agreement.

The ANNUAL CONSULTANT agrees to abide by all provisions of the SBE Ordinance and understands that failure to comply with any of the requirements will be considered a breach of contract.

The ANNUAL CONSULTANT has provided Exhibit "D" (Letter's of Intent) attached hereto indicating the specific participation.

The ANNUAL CONSULTANT understands that each SBE firm utilized on this Agreement must be certified by Palm Beach County in order to be counted toward the contract goal.

The ANNUAL CONSULTANT understands that it is the responsibility of the County Department letting the Agreement and the SBE Office to monitor compliance with the SBE Ordinance requirements. In that regard, the ANNUAL CONSULTANT agrees to furnish progress payment reports, with each billing, to both parties on the progress of the SBE participation for this Agreement.

The ANNUAL CONSULTANT further agrees to provide the SBE Office with a copy of the ANNUAL CONSULTANT'S agreement with the SBE subcontractor or any other related documentation upon request.

The ANNUAL CONSULTANT understands the requirements to comply with the tasks and proportionate dollar amounts throughout the term of the Agreement as it relates to the use of SBE firms. Any SBE's which, for any reason, no longer remain associated with the Project shall be replaced by the ANNUAL CONSULTANT with other certified SBE's, unless approval to the contrary is granted by the COUNTY.

The ANNUAL CONSULTANT understands that he/she is prohibited from making any agreements with the SBE in which the SBE promises not to provide subconsultant quotations to other bidders or potential bidders.

The ANNUAL CONSULTANT agrees to maintain all relevant records and information necessary to document compliance with the SBE Ordinances, and will allow the COUNTY to inspect such records.

The ANNUAL CONSULTANT shall certify in writing that all subcontractors, subconsultants and suppliers have been paid for work and materials from previous progress payments received, less any retainage, by the ANNUAL CONSULTANT prior to receipt of any further progress payments. During the term of the Agreement and upon completion of the Agreement, the COUNTY may request documentation to certify payment to subcontractors, subconsultants or suppliers. This provision in no way creates any contractual relationship between any subcontractor, subconsultant, or supplier and the COUNTY or any liability on the COUNTY for the ANNUAL CONSULTANT'S failure to make timely payment to the subcontractor, subconsultant or supplier.

7.9. **Personnel**

The ANNUAL CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement.

Such personnel shall not be employees of or have any contractual relationship with the COUNTY. All of the services required herein shall be performed by the ANNUAL CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

The ANNUAL CONSULTANT warrants that all services shall be performed by competent personnel in accordance with all applicable national, federal, state, and local professional and technical standards.

7.10. **Availability of Funds**

The COUNTY'S performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the Board of County Commissioners.

7.11. **Conflict of Interest**

The ANNUAL CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes. The ANNUAL CONSULTANT further represents that no person having any interest shall be employed for said performance.

The ANNUAL CONSULTANT shall promptly notify the COUNTY'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the ANNUAL CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the ANNUAL CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the ANNUAL CONSULTANT.

The COUNTY agrees to notify the ANNUAL CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the ANNUAL CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the ANNUAL CONSULTANT, the COUNTY shall so state in the notification and the ANNUAL CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the ANNUAL CONSULTANT under the terms of this Agreement.

**7.12. Independent Contractor Relationship**

The ANNUAL CONSULTANT and subconsultants are, and shall be, in the performance of all work services and activities under this Agreement, Independent Contractors, and not employees, agents, or servants of the COUNTY. The ANNUAL CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation other than specifically provided for in this Agreement. The ANNUAL CONSULTANT shall be responsible to the COUNTY for all the work or services performed by the ANNUAL CONSULTANT or any person or firm engaged as a subcontractor to perform work in fulfillment of this Agreement.

**7.13. Access and Audits**

The ANNUAL CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the ANNUAL CONSULTANT'S place of business.

**7.14. Severability**

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**7.15. Entirety of Contractual Agreement**

The COUNTY and the ANNUAL CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

During the term of this Contract, the COUNTY may require professional services that are the same or similar to those described in this agreement. The COUNTY may, at its sole discretion, obtain said services in accordance with the State of Florida Consultants Competitive Negotiation Act. If the COUNTY so elects, it is mutually understood that the relationship between the ANNUAL CONSULTANT and the COUNTY under this Contract shall be considered as neither barring the ANNUAL CONSULTANT from, nor granting special consideration to the ANNUAL CONSULTANT, in participating in the selection process for a consultant to provide such additional services.

## **SECTION 8 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES**

### **8.1 Federal & State Tax**

The ANNUAL CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

8.2. The following Exhibits are attached to and made a part of this Agreement.

8.2.1. Exhibit A: Scope of Services

8.2.2. Exhibit B: Fee Summary

8.2.3. Exhibit C: Truth in Negotiation, Prohibition Against Contingent Fees & Public Entity Crimes Statements, Conflict of Interest Disclosure Form, Disclosure of Ownership Interests Form (if applicable).

8.2.4. Exhibit D: Letters of Intent to Perform as an SBE and/or M/WBE (if applicable).

8.3. This Agreement (consisting of pages 1 to 13, inclusive), together with the Exhibits and Schedules identified above constitute the entire Agreement between the COUNTY and the ANNUAL CONSULTANT and supersedes all prior written or oral understandings. This Agreement and said Exhibits may only be amended, supplemented, modified or canceled by a duly executed written instrument.

## **SECTION 9 - CRIMINAL HISTORY RECORDS CHECK**

The ANNUAL CONSULTANT shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if ANNUAL CONSULTANT'S employees or subcontractors are required under this contract to enter a "critical facility" as identified in Resolution R-2003-1274. The ANNUAL CONSULTANT acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the ANNUAL CONSULTANT shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030.

## **SECTION 10 - REGULATIONS; LICENSING REQUIREMENTS**

The CONSULTANT shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONSULTANT is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

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

OWNER:  
**Palm Beach County, Florida**  
BY ITS BOARD OF COMMISSIONERS:

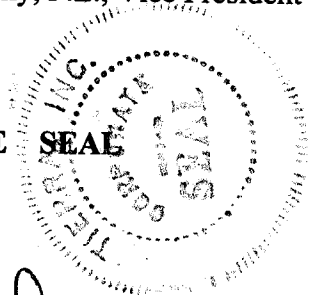
ANNUAL CONSULTANT:  
**Tierra, Inc.**

BY: \_\_\_\_\_  
Addie L. Greene, Chairperson

BY: \_\_\_\_\_  
Raj Krishnasamy, P.E., Vice President

SEAL

CORPORATE SEAL



ATTEST:  
Sharon R. Bock, Clerk & Comptroller  
Circuit Court

ATTEST WITNESS:  
BY: Bonni Font  
(Print Name)

BY: \_\_\_\_\_  
(Deputy Clerk)

\_\_\_\_\_  
(Signature)

APPROVED AS TO TERMS  
AND CONDITIONS:

BY: Francis Thomas  
(Print Name)

BY: [Signature]

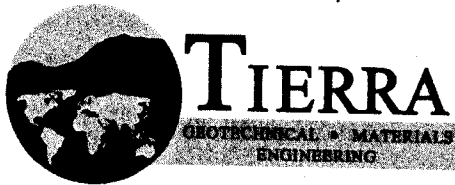
\_\_\_\_\_  
(Signature)

APPROVED AS TO FORM &  
LEGAL SUFFICIENCY:

BY: \_\_\_\_\_  
Assistant County Attorney

**EXHIBIT "A"**





June 19, 2008

Palm Beach County Board of County Commissioners  
C/O Engineering & Public Works Department  
Roadway Production Division/CCNA Section  
2300 North Jog Road  
West Palm Beach, FL 33411

Attention: David Young, P.E., Special Project Manager/CCNA

**RE: Scope of Services for Annual Agreement – (Testing Lab Services)**

Dear David,

Our Scope of services for the Annual Contract on a task order basis for the Palm Beach County User Departments will be as follows:

1. Geotechnical Engineering and Drilling
2. Construction Testing and Quality Control
3. Threshold Inspection
4. Materials Testing and Certification
5. Non-Destructive Examination and Testing
6. Pavement Design/Evaluation/Rehabilitation
7. CEI Support
8. Laboratory Testing

We appreciate the opportunity and are looking forward to continue working with Palm Beach County. If you have any questions or need any additional information, please feel free to call our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Raj Krishnasamy". The signature is fluid and stylized, with a long horizontal stroke at the beginning and a large loop at the end.

Raj Krishnasamy, P.E.  
Vice President

# EXHIBIT "B"

**TESTING LAB ANNUAL SERVICES  
SCHEDULE OF FEES AND SERVICES  
Fiscal Year 2008**

NOTE: The intent of the contract is to include all labor, materials, transportation, set-up, fuel, equipment, and other items necessary to complete the item of work. All items incidental to or necessary for the completion of the item shall be included in the price.

**I. SOIL TESTING**

1. Field Density Test (five [5] minimum).....	\$25/test
2. Proctors.....	\$85/test
3. Florida Bearing Value Test.....	\$45/test
4. Limerock Bearing Ratio Test.....	\$275/test
5. Atterberg Limit Test.....	\$80/test
6. Carbonate Content Test.....	\$100/test
7. Organic Content Test.....	\$50/test
8. D.O.T. Corrosivity.....	\$185/test
9. Soil Observation (On Site).....	\$55/hr
10. Natural Sample Moisture Content.....	\$20/test
11. Unit Weight and Moisture Content (Undisturbed Sample).....	\$50/test

**II. CONCRETE & MASONRY MATERIALS**

1. Concrete Compression test (Min. four [4] cylinders per trip) - Prepare cylinders & slump test on site, and deliver to lab.....	\$80/set
2. Additional Concrete cylinders.....	\$18/cyl
3. Concrete Compression test only [delivered to lab].....	\$18/cyl
4. Slump test.....	\$10each
5. Air Content Test.....	\$15each
6. Stand-by.....	\$55/hr
7. Grout Prism (Six [6] per set) - Includes preparation of Prism on site.....	\$80/set
8. 2" x 2" Mortar Cubes (Six [6] per set) - Includes preparation of Cubes on site.....	\$80/set
9. Additional Mortar cubes.....	\$18each
10. Masonry Units	
A. Compressive Strength.....	\$80/unit
B. Absorption.....	\$50/unit
11. Concrete Cores (Min. 3); - Secure, trim & test.....	\$80/core
- Testing of core [delivered to lab (Incl. Trim)].....	\$50/core
12. Swiss Hammer Testing.....	\$55/hr
13. Windsor Probe Test (Min. 3 shots).....	\$150/test
14. Additional Windsor Probe Tests.....	\$100/test

**III. AGGREGATE TESTING**

1. Grain size determination:
  - A. Full grain size (8 sieves)..... \$75/test
  - B. Wash through (#200)..... \$45/test
2. Sieve Analysis – Course Aggregate..... \$45/test
3. Specific Gravity & Absorption of Fine or Coarse Aggregate..... \$70/test

**IV. ASPHALT TESTING**

1. Asphalt Cores (obtaining core samples)..... \$50each
2. Asphalt Extraction & Gradation..... \$150each
3. Asphalt Density and Thickness..... \$25each
4. Marshall Stability (Incl. density, flow and stability of 3 specimens)  
(50 blows)..... \$150each
5. Coring Machine plus Generator Rental..... \$400/trip

**V. INSPECTION SERVICES**

1. Concrete Inspection (on job-site or plant)..... \$55/hr
2. Pile Driving Inspection..... \$70/hr
3. Pre-Stress Yard Inspection..... \$70/hr
4. Steel Inspection..... \$70/hr
5. Threshold Inspection..... \$70/hr

**VI. FIELD EXPLORATIONS**

1. Auger Borings..... \$9/ft
2. Hand Augers..... \$110/hr
3. Standard Penetration Tests – Truck Rig (0' – 50')..... \$12ft  
(51' – 100')..... \$14/hr
4. Grout bore holes -  
0' – 50'..... \$5.50/hr  
51' – 100'..... \$6.50/hr
5. Casing  
0' – 50'..... \$7/ft  
51' – 100'..... \$9/ft
6. Static Cone Penetration Test (0' – 100')..... \$N/A
7. Muck Probing (4 hr. min.)..... \$100/hr
8. Mobilization of drilling equipment to project (Min. Charge):
  - A. 50 mile travel..... \$350/trip
  - B. 100 mile travel..... \$450/trip
9. Foundation Analysis and Recommendation..... \$Staff
10. Percolation test..... \$275/test

**VII. PREMIUM FOR TRAVEL COSTS TO BELLE GLADE AREA**

- For testing (all tests)..... \$100/trip

**VIII. OVERTIME..... 15% of Basic Rate**

**IX. ANY ADDITIONAL TESTING OR SERVICES AS AUTHORIZED AND APPROVED BY THE OWNER, PALM BEACH COUNTY.**

**X. ENGINEERING AND PROFESSIONAL SERVICES**

1. Principal Engineer, P.E.....	\$145/hr
2. Senior Geotechnical Engineer, P.E.....	\$125/hr
3. Engineer, P.E. ....	\$115/hr
4. Staff Engineer.....	\$85/hr
5. Senior Engineering Technician .....	\$65/hr
6. Engineering Technician .....	\$60/hr
7. Drafter/CADD .....	\$60/hr

*2.99 Multiplier*

**EXHIBIT "C"**

**PROJECT:** Testing Lab Annual Services  
**Project No.:** On a Task Order Basis

**CONSULTANT:** Tierra, Inc.

#### **TRUTH-IN-NEGOTIATION STATEMENT**

By entering into this Agreement, the **CONSULTANT** certifies that the wage rates and costs used to determine the lump sum fees contained in herein are accurate, complete and current as of the date of this Agreement.

The said lump sum fees shall be adjusted to exclude any significant sums should the **COUNTY** determine that the lump sum fees were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside consultants.

The **COUNTY** shall exercise its right under this "Certificate" within one year following final payment.

#### **PROHIBITION AGAINST CONTINGENT FEES STATEMENT**

By entering into this Agreement the **CONSULTANT** warrants that they have not employed or retained any company or person other than a bonafide employee working solely for the **CONSULTANT** to solicit or secure this Agreement and that they have not paid or agreed to pay any person, company, corporation, individual or firm other than a bonafide employee working solely for the **CONSULTANT**, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of making of this agreement.

#### **PUBLIC ENTITY CRIMES STATEMENT**

As provided in F.S. 287.132-133, by entering this Agreement or performing any work in furtherance hereof, the **CONSULTANT** certifies that it, its affiliates, suppliers, sub-contractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3) (a).

#### **NON-DISCRIMINATION STATEMENT**

The **CONSULTANT** warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

  
\_\_\_\_\_  
Raj Krishnasamy, P.E., Vice President

**CONFLICT OF INTEREST DISCLOSURE FORM**

Project: Testing Lab Annual Services  
Project No: On a Task Order Basis

ENGINEER represents that it presently has no interest, either direct or indirect, which would or could conflict in any manner with the performance of services for the County, except as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Attach additional sheets as needed.)

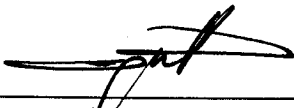
ENGINEER further represents that no person having any interest shall be employed for said performance. By signing below, ENGINEER certifies that the information contained herein is true and correct and constitutes all current potential conflicts of interest which may influence or appear to influence ENGINEER'S judgment or quality of services being provided to the County.

ENGINEER shall promptly notify the COUNTY in writing by certified mail of all potential conflicts of interest that may arise in the future through any prospective business association, interest or other circumstance which may influence or appear to influence ENGINEER'S judgment or quality of services being provided to the County. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that ENGINEER may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute an unacceptable conflict of interest if entered into by the ENGINEER.

If, in the sole opinion of the COUNTY, the prospective business association, interest or circumstance of ENGINEER would constitute an unacceptable conflict of interest to the COUNTY, the COUNTY shall so state in the notification and the ENGINEER shall not enter into said association, interest or circumstance.

THIS DISCLOSURE is submitted by Raj Krishnasamy, P.E., as  
(Name of Individual)  
Vice President, of Tierra, Inc.  
(Title/Position) (Firm Name of ENGINEER)

who hereby certifies that the information stated above is true and correct. Further, it is hereby acknowledged that any misrepresentation by the Consultant on this Disclosure is considered an unethical business practice and is grounds for sanctions against future County business with the Consultant.

  
\_\_\_\_\_  
(Signature)

June 11<sup>th</sup> 2008  
\_\_\_\_\_  
(Date)



**EXHIBIT "D"**

**SCHEDULE 2**

**LETTER OF INTENT TO PERFORM AS AN SBE-M/WBE CONSULTANT/SUBCONSULTANT**

PROJECT NO. On a Task Order Basis

PROJECT NAME: Testing Lab Annual Services

TO: Palm Beach County  
(Name of Prime Consultant)

The undersigned is certified by Palm Beach County as a(n) - (check one or more, as applicable):

Small Business Enterprise (SBE) \_\_\_\_\_ Minority Business Enterprise (M/WBE) X

Black \_\_\_\_\_ Hispanic X Women \_\_\_\_\_ Caucasian \_\_\_\_\_ Other (Please Specify) \_\_\_\_\_

Date of Palm Beach County Certification: \_\_\_\_\_

The undersigned is prepared to perform the following described work in connection with the above project and will enter into a formal agreement for work with you conditioned upon your execution of a contract with Palm Beach County.  
**(Specify in detail particular work items or parts thereof to be performed)**

Testing Lab Annual Services.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SBE-M/WBE Participation 100.00 %

If undersigned intends to sub-subcontract any portion of this subcontract to a non-certified SBE subcontractor, the name of any such subcontractor must be stated \_\_\_\_\_

The undersigned subconsultant understands that the provision of this form to prime bidder does not prevent subconsultant from providing quotations to others.

Tierra, Inc.  
(Print name of SBE-M/WBE Subcontractor)

By: [Signature]  
(Signature)

Raj Krishnasamy, P.E., Vice President  
(Print name/title of person executing on behalf of SBE-M/WBE Subconsultant)

Date: June 11, 2008

Client#: 10161

TIERINC3

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
06/13/2008

**PRODUCER**  
Suncoast Insurance Associates  
P.O. Box 22868  
Tampa, FL 33622-2668  
813 289-5200

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**  
Tierra Inc  
7805 Professional Place  
Suite A  
Tampa, FL 33637

**INSURERS AFFORDING COVERAGE**  
INSURER A: **XL Specialty Insurance Company**  
INSURER B:  
INSURER C:  
INSURER D:  
INSURER E:

**NAIC #**  
37885

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
		<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC.				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A		<b>OTHER Professional Liability</b>	DPR9611866	05/01/08	05/01/09	<b>\$1,000,000 per claim</b> <b>\$2,000,000 annl aggr.</b>

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**  
 Professional Liability is claims made and reported.  
 RE: Testing Lab Annual Services, Retroactive Date 07/01/1992

<p><b>CERTIFICATE HOLDER</b></p> <p>Palm Beach County Engineering &amp; Public Works Operations Roadway Production Division, Ste. 3W-33 2300 N. Jog Rd. West Palm Beach, FL 33411</p>	<p><b>CANCELLATION</b></p> <p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.</p> <p>AUTHORIZED REPRESENTATIVE <i>[Signature]</i></p>
---	--

## **IMPORTANT**

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

This certificate is executed by Liberty Mutual Insurance Group as respects such insurance as is afforded by those companies.

BM0068

**Certificate of Insurance**  
 This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate is not an insurance policy and does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policies listed below. Policy limits are no less than those listed, although policies may include additional sublimits not listed below. Policy limits may be reduced by claims or other payments.

This is to certify that (Name and address of insured)

Tierra, Inc.  
 2765 Vista Parkway  
 Suite 10  
 West Palm Beach, FL 33411



is, at the issue date of this certificate, insured by the Company under the policy(ies) listed below. The insurance afforded by the listed policy(ies) is subject to all their terms, exclusions and conditions and is not altered by any requirement, term or condition of any contract or other document with respect to which this certificate may be issued.

Expiration Type		Eff./Exp. Date(s)	Policy Number(s)	Limits of Liability	
<input type="checkbox"/>	Continuous*			Coverage afforded under WC law of the following states:	Employers Liability
<input checked="" type="checkbox"/>	Extended Policy Term	05/01/2008 / 05/01/2009	WC2-151-288856-018		FL
<b>Workers Compensation</b>				Bodily Injury By Disease \$500,000 Policy Limit	
				Bodily Injury By Disease \$500,000 Each Person	
<b>General Liability</b>		05/01/2008 / 05/01/2009	TB7-151-288856-028	<b>General Aggregate-Other than Prod/Completed Operations</b> \$2,000,000	
<input type="checkbox"/>	Claims Made			<b>Products/Completed Operations Aggregate</b> \$2,000,000	
<input checked="" type="checkbox"/>	Occurrence			<b>Bodily Injury and Property Damage Liability</b> \$1,000,000	Per Occurrence
<b>Retro Date</b>				<b>Personal and Advertising Injury</b> \$1,000,000	Per Person / Organization
				<b>Other Liability</b> \$300,000 Premise rented to you	<b>Other Liability</b> \$5,000 Medical
<b>Automobile Liability</b>		05/01/2008 / 05/01/2009	AS5-151-288856-038	<b>Each Accident - Single Limit - B. I. and P. D. Combined</b> \$1,000,000	
<input checked="" type="checkbox"/>	Owned			<b>Each Person</b>	
<input checked="" type="checkbox"/>	Non-Owned			<b>Each Accident or Occurrence</b>	
<input checked="" type="checkbox"/>	Hired			<b>Each Accident or Occurrence</b>	
<b>Umbrella Excess</b>		05/01/2008 / 05/01/2009	TH2-651-288856-078	\$5,000,000 damage over underlying limits	

**C O M M E N T S**  
 Project: Testing Lab Annual Services  
 Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents are all listed as additional insured with respect to general liability under form LG3219.

**IMPORTANT** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s). If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsements. The following applies only with respect to insurance for motor carriers registered in Florida: As provided for in Fla. Stat. § 320.02(5)(e), the listed insurance policy may not be cancelled on less than 30 days written notice by the insurer to the Department of Hwy Safety & Motor Vehicles, such 30 days notice to commence from date notice is received by the Department.

Notice of cancellation: (not applicable unless a number of days is entered below). Before the stated expiration date the company will not cancel or reduce the insurance afforded under the above policies until at least 30 days notice of such cancellation has been mailed to:

Office: TAMPA, FL Phone: 813-264-6588

**Certificate Holder:**  
 Palm Beach County  
 Engineering & Public Works Operations  
 Roadway Production Division, Suite #3W-33  
 2300 North Jog Road  
 West Palm Beach, FL 33411

*Lee F. Steinberger*  
**LEE STEINBERGER**  
 Authorized Representative

Date Issued: 06/11/2008 Prepared By: EC

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - OWNERS, LESSEES OR  
CONTRACTORS - SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
As required by written contract/all locations were you have worked for the Additional Insured	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your negligent acts or omissions; or
2. The negligent acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above. There is no coverage for the additional insured for "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence of the additional insured or by those acting on behalf of the additional insured.

**B. Exclusions**

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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**C. Other Insurance**

This insurance shall be excess over any other insurance available to the additional insured, whether such insurance is on an excess, contingent or primary basis, unless the written agreement with you requires that the insurance provided for the additional insured be primary concurrent or primary non-contributory, in

comparison to the additional insured's own policy or policies.

To the extent that the additional insured would have had the right to pursue any other insurance carrier for coverage, including a defense, we shall share that right with the additional insured.

This endorsement is executed by the LIBERTY INSURANCE CORPORATION

Premium \$

Effective Date

Expiration Date

For attachment to Policy No.

TB7-151-288856-028

Audit Basis

Issued To

*Dexter R. Jagg*  
SECRETARY

*Leon F. Hoff*  
PRESIDENT

Countersigned by

*Ralph L. Barales*  
Authorized Representative

Issued

Sales Office and No.

End. Serial No. 20