

AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this 18th day of August, 2003, by and between the City of Naples, Florida, a municipal corporation, (hereinafter referred to as the "OWNER") and **Risk Management Associates, Inc.**, a Florida corporation, whose business address is **8211 West Broward Blvd., Suite 400, Plantation, FL 33324** (hereinafter referred to as the "CONTRACTOR").

WITNESSETH:

WHEREAS, the OWNER desires to obtain professional **Insurance Brokerage** services of the CONTRACTOR concerning certain services related to **Property, Liability and Workers' Compensation Insurance Brokerage Services** (hereinafter referred to as the "Project"), said services being more fully described in Exhibit A, "Scope of Services", which is attached hereto and incorporated herein; and

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

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

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

ARTICLE ONE CONTRACTOR'S RESPONSIBILITY

1.1. The Basic Services to be performed by CONTRACTOR hereunder are **Insurance Brokerage Services** and as further set forth in Exhibit C, "Scope of Services" which is attached hereto and incorporated herein.

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

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

1.4. CONTRACTOR agrees to employ and designate, in writing, within five (5) calendar days after receiving its Notice to Proceed, a qualified licensed professional to serve as the CONTRACTOR's project manager (hereinafter referred to as the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONTRACTOR with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement.

1.5. The CONTRACTOR has represented to the OWNER that it has expertise in the type of professional services that will be required for the Project. The CONTRACTOR agrees that all services to be provided by CONTRACTOR pursuant to this Agreement shall be subject to the OWNER's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and

performed by CONTRACTOR hereunder. In the event of any conflicts in these requirements, the CONTRACTOR shall notify the OWNER of such conflict and utilize its best professional judgment to advise OWNER regarding resolution of the conflict.

1.6. CONTRACTOR agrees not to divulge, furnish or make available to any third person, firm or organization, without OWNER's prior written consent, or unless incident to the proper performance of the CONTRACTOR's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONTRACTOR hereunder, and CONTRACTOR shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph.

1.7. CONTRACTOR agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of OWNER who in any way deals with, coordinates on, or assists with, the professional services provided in this Agreement, for a period of two (2) years after termination of all provisions of this Agreement. For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council. For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director. In the event CONTRACTOR violates the provisions of this paragraph, CONTRACTOR shall be required to pay damages to OWNER in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of OWNER from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last two (2) years of gross compensation from OWNER, whichever is greater.

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

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

ARTICLE TWO OWNER'S RESPONSIBILITIES

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

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

2.2. The Project Coordinator shall:

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

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

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

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

ARTICLE THREE TIME

3.1. Services to be rendered by CONTRACTOR shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from OWNER for all or any designated portion of the Project and shall be performed and completed by **September 30, 2006**. Time is of the essence with respect to the performance of this Agreement.

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

3.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of CONTRACTOR's services from any cause whatsoever, including those for which OWNER may be responsible in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONTRACTOR's sole remedy against OWNER will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Provided, however, if through no fault or neglect of the CONTRACTOR, the services to be provided hereunder have not been completed within 18 months of the date hereof, the CONTRACTOR's compensation may be equitably adjusted, with respect to those services that have not yet been performed, to reflect the incremental increase in costs experienced by CONTRACTOR after expiration of said 18 month period.

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

ARTICLE FOUR COMPENSATION

4.1. The total compensation to be paid CONTRACTOR by the OWNER for all Basic Services shall not exceed **\$172,500 (except if the City exercises their option to extend the contract for service for two additional years. In which case, the service fees for the two additional years will be mutually agreed upon.)** and shall be paid in the manner set forth in and Exhibit A, "Basis of Compensation", which is attached hereto and incorporated herein.

**ARTICLE FIVE
MAINTENANCE OF RECORDS**

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

**ARTICLE SIX
INSURANCE**

6.1. CONTRACTOR shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in Exhibit B to this Agreement.

**ARTICLE SEVEN
SERVICES BY CONTRACTOR'S OWN STAFF**

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

**ARTICLE EIGHT
WAIVER OF CLAIMS**

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

**ARTICLE NINE
TERMINATION OR SUSPENSION**

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

9.2. If, after notice of termination of this Agreement as provided for in paragraph 10.1 above, it is determined for any reason that CONTRACTOR was not in default, or that its default was excusable, or that OWNER otherwise was not entitled to the remedy against CONTRACTOR provided for in paragraph 10.1, then the notice of termination given pursuant to paragraph 10.1 shall be deemed to be the notice of termination provided for in paragraph 10.3 below and CONTRACTOR's remedies against OWNER shall be the same as and limited to those afforded CONTRACTOR under paragraph 10.3 below.

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

ARTICLE TEN CONFLICT OF INTEREST

10.1. CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. CONTRACTOR further represents that no persons having any such interest shall be employed to perform those services.

ARTICLE ELEVEN MODIFICATION

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

ARTICLE TWELVE NOTICES AND ADDRESS OF RECORD

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

City of Naples
735 Eighth Street South
Naples, Florida 34102-3796
Attention: Robert E. Lee, DPA, City Manager

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

Risk Management Associates
8211 West Broward Blvd. Ste. 460
Plantation, FL 33324
Attention: Todd Higley

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

**ARTICLE THIRTEEN
MISCELLANEOUS**

- 13.1. CONTRACTOR, in representing OWNER, shall promote the best interest of OWNER and assume towards OWNER a duty of the highest trust, confidence, and fair dealing.
- 13.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.
- 13.3. This Agreement is not assignable, in whole or in part, by CONTRACTOR without the prior written consent of OWNER.
- 13.4. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.
- 13.5. The headings of the Articles, Exhibits, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Exhibits, Parts and Attachments.
- 13.6. This Agreement constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

**ARTICLE FOURTEEN
APPLICABLE LAW**

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

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

ATTEST:

OWNER:

CITY OF NAPLES, FLORIDA,
A Municipal Corporation

By: _____
Tara A. Norman, City Clerk

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

Approved as to form
and legal sufficiency:

By: _____
Robert D. Pritt, City Attorney

CONTRACTOR:

RISK MANAGEMENT ASSOCIATES, INC.
A Florida Corporation

By: _____
Todd E. Higley, Vice President
Public Entity Division

(CORPORATE SEAL)

EXHIBIT A
BASIS OF COMPENSATION

A.1.1. As consideration for providing Basic Services as set forth herein in Article I, Section 1.1 of the Agreement, OWNER agrees to pay, and CONTRACTOR agrees to accept payment on a time and reimbursement cost basis as follows:

Broker Compensation

The successful firm shall be compensated on an **annual fee basis**. Fees will be payable quarterly at the end of the each quarter with the first installment due October 31, 2003. All program premiums and charges are to be written net of commission and the acceptance of a commission shall be grounds for immediate termination of the contract. If a carrier does not or cannot work on a net of commission arrangement, the firm shall disclose this fact and the commission shall be deducted from the annual fee. The successful firm shall provide an annual statement from each carrier confirming that the insurance carrier has paid no commissions. Full disclosure of all compensation earned, either directly or indirectly, is required. Use of intermediaries, wholesalers, subsidiary companies, etc. is expected and encouraged if advantageous to the City of Naples. However, all fees and or commissions earned as a result of their use, must be disclosed and will be deducted from the annual fee. Additionally, the City reserves the right to seek additional relevant records as a means of enforcing this provision.

Proposal Price

The following is the annual fee we are proposing to provide for the services as described in the Scope of Work.

October 1, 2003 to September 30, 2004	<u>\$ 55,000</u>
October 1, 2004 to September 30, 2005	<u>\$ 57,500</u>
October 1, 2005 to September 30, 2006	<u>\$ 60,000</u>

END OF EXHIBIT A.

EXHIBIT B
GENERAL INSURANCE REQUIREMENTS

The Contractor shall not commence work until he has obtained all the insurance required under this heading, and until such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work until all similar insurance required of the subcontractor has also been obtained and approved by the Owner.

Certificates of insurance must be issued by an authorized representative of the insurance company at the request and direction of the policyholder and must include sufficient information so as to identify the coverage and the contract for Owner's improvements for which they are issued. Certificates of insurance must be issued by a nationally recognized insurance company with a Best's Rating of no less than B+VII, satisfactory to the Owner, and duly licensed to do business in the state of said Contract.

The Contractor shall procure and maintain, during the life of this Contract, Workmen's Compensation Insurance for all of his employees to be engaged in work under this Contract, and he shall require any subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by the Contractor's insurance. In case any employees are to be engaged in hazardous work under this Contract, and are not protected under this Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate coverage for the protection of such employees. It is acceptable to use a State-approved Workmen's Compensation Self-Insurance fund.

The Contractor shall take out and maintain during the life of this Contract, Public Liability and Property Damage and shall include Contractual Liability, Personal Injury, Libel, Slander, False Arrest, Malicious Prosecution, Wrongful Entry or Eviction, Broad Form Property Damage, Products, Completed Operations and XCU Coverage to be included on an occurrence basis, and to the full extent of the Contract to protect him, the Owner, and any subcontractor performing work covered by this Contract from damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either of them. The Contractor shall also maintain automobile liability insurance including "non-owned and hired" coverage. The entire cost of this insurance shall be borne by the Contractor.

The amount of such insurance shall be no less than \$1,000,000 annual aggregate for bodily injury and property damage combined per occurrence.

The City of Naples and their Engineer must be named as **Additional Insured** on the insurance certificate and the following must also be stated on the certificate. "These coverages are primary to all other coverages the City possesses for this contract only." The City of Naples shall be named as the Certificate Holder. **The Certificate Holder shall read as follows:**

The City of Naples
735 Eighth Street South
Naples, Florida 34102

No City Division, Department, or individual name should appear on the Certificate.
No other format will be acceptable.

Thirty (30) days cancellation notice required.

The Certificate must state the bid number and title.

When using the "Accord" form of insurance certificate, please note that under the cancellation clause, the following must be deleted: "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company"

EXHIBIT C
SCOPE OF SERVICES

Risk Management Associates agrees to assist the City of Naples in advising and coordinating with the City's Risk Manager to include, but are not limited to the following:

- A. Risk Management Associates shall prepare annual marketing strategy reports identifying anticipated market conditions and proposing a marketing strategy for the City's major loss exposure areas prior to policy renewal.
- B. Risk Management Associates shall assist in developing underwriting data and specifications for renewal negotiations.
- C. Risk Management Associates shall provide trended values for property insurance policies.
- D. With the participation of the Risk Manager, Risk Management Associates shall obtain bids from the insurance industry and negotiate the best terms and coverage for the various exposure areas.
- E. Risk Management Associates shall evaluate the commitment and financial stability of the underwriters.
- F. Risk Management Associates shall service existing insurance policies by reviewing coverage issues, issuing binders and Certificates of Insurance, and request endorsements from carriers in a timely manner.
- G. Risk Management Associates shall schedule quarterly meetings with the Risk Manager to discuss loss control issues, exposure changes, and general administrative matters pertaining to the City's insurance program.
- H. Risk Management Associates shall analyze the City's exposure to loss, adequacy of coverage, and develop options on coverage not presently purchased by the City.
- I. Risk Management Associates shall provide service for day-to-day contact on insurance matters.
- J. Risk Management Associates shall assists the City in developing insurance requirements for the various contracts

(design, construction, and service) and in reviewing insurance policies, contracts, leases and bonds as requested by the City.

EXHIBIT C
SCOPE OF SERVICES
(continued)

- K. Risk Management Associates shall prepare an annual report including a schedule of policies in force, coverage provisions, premiums, insurance claims experience for the prior policy year and recommendations for possible adjustments to insurance coverage for the next policy year. The report should provide a summary of broker support services rendered during the prior year, with recommendations for broker services recommended for the subsequent year.
- L. Risk Management Associates shall work with the City's Risk Manager to establish a viable and cost effective self-insurance program.
- M. Risk Management Associates shall provide other services that are normally and customarily required of a municipal insurance broker.
- N. Risk Management Associates shall analyze insurance market trends and report in advance on the affect that trends will have on pricing and coverage availability.
- O. Risk Management Associates shall assist the Risk Manager in the audit of Workers' Compensation classification coding.
- P. Risk Management Associates shall provide routine verbal consulting advise on safety and loss control matter as they relate to the City's risk management program. On site inspections, written programs and training programs may be negotiated for an additional fee.
- Q. Risk Management Associates shall provide access to and

consulting advice regarding the potential for utilizing new and emerging risk financing programs.