VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 2015 - 71

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, APPROVING A RESEARCH SERVICE AGREEMENT BETWEEN THE VILLAGE OF ESTERO AND FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village Council has determined that it is in the best interest of the Village of Estero to assess existing infrastructure conditions and needs with the intent of prioritizing improvements and investments in the short term; and

WHEREAS, Florida Gulf Coast University Board of Trustees (FGCU) has agreed to undertake and conduct the work entitled "Estero Infrastructure Inventory" at a fixed fee in the amount of $16,113; and

WHEREAS, the Village Council determines that approving the agreement with Florida Gulf Coast University Board of Trustees (FGCU) is in the best interest of the Village.

NOW, THEREFORE, be it resolved by the Village Council of the Village of Estero, Florida:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Village Council authorizes the Village Mayor to execute a contractual agreement with Florida Gulf Coast University Board of Trustees (FGCU) for the work entitled "Estero Infrastructure Inventory" at a fixed fee in the amount of $16,113.

Section 3. This Resolution shall take effect immediately upon adoption.

ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this 7th day of October, 2015.

Attest:

By: _____
Kathy Hall, MMC, Village Clerk

VILLAGE OF ESTERO, FLORIDA

By: _____
Nicholas Batos, Mayor

Reviewed for legal sufficiency:

By: _____
Burt Saunders, Esq., Village Attorney

Research Service Agreement

Between

The Village of Estero

and

Florida Gulf Coast University Board of Trustees

THIS AGREEMENT is made by and between Florida Gulf Coast University Board of Trustees, (hereafter referred to as "FGCU"), a public body corporate, established pursuant to Florida Statutes, whose address is 10501 FGCU Blvd S, Fort Myers, FL 33965 and **The Village of Estero** (hereafter referred to as "SPONSOR"), whose address is **21500 Three Oaks Parkway, Estero, FL 33928**

WHEREAS, SPONSOR desires to retain the services of FGCU, upon the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, SPONSOR and FGCU agree as follows:

1. **Scope of Service to be Performed**: FGCU agrees to undertake and conduct the work entitled; **"Estero Infrastructure Inventory"** for SPONSOR as outlined in **Exhibit A.**

2. **Period of Service:** The research services called for by Article 1, may begin on **October 1, 2015** with activities ending on **January 31, 2016** unless extended by written amendment or terminated sooner following the termination provisions set forth below.

   Research Services involving vertebrate animals and/or human subjects may not be conducted until IACUC and/or IRB approvals have been obtained.

3. **Fixed Fee and Payment:** SPONSOR agrees to pay FGCU a fixed fee in the amount of **$16,113** for research services to be provided under this agreement in accordance with the following schedule and receipt of FGCU invoice:

1. **$4,000 upon execution of this agreement.**
2. **Final payment of $12,113 following acceptance of the Final Report by SPONSOR's administrative contact.**

Payment shall be made to "Florida Gulf Coast University" and remitted to the following address:

Office Research and Graduate Studies
202 Howard Hall
10501 FGCU Blvd S.
Fort Myers, FL 33965-6565

4. **Points of Contact:** The following are designated as Investigators and Administrative contacts for the purposes of this Agreement. The Investigators will be responsible for the technical matters of the research services outlined in Exhibit A. The FGCU Investigator is essential to the work being performed and no change to the FGCU Investigator without SPONSOR written approval.

Investigators:

For FGCU:

Margaret Banyan, Associate Professor
Florida Gulf Coast University
10501 FGCU Boulevard South
Fort Myers, FL 33965-6565
(239) 590-7850 mbanyan@fgcu.edu

Claude Villiers, Associate Professor
Florida Gulf Coast University
10501 FGCU Boulevard South
Fort Myers, FL 33965-6565
(239) 590-7479 cvillier@fgcu.edu

Administrative:

For FGCU:

Dr. Tachung Yih, Associate Vice President for Research
Office of Research and Graduate Studies
Howard Hall 202
10501 FGCU Boulevard South
Fort Myers, FL 33965-6565
(239) 590-7020 tcyih@fgcu.edu

For SPONSOR:

Nick Batos, Mayor
The Village of Estero
21500 Three Oaks Parkway
Estero, Florida 33928
(239) 292-2909 batos@estero-fl.gov

3. **Reporting Requirements:** In addition to research services as described by Article 1, FGCU Investigator shall deliver the following reports to the SPONSOR's Investigator:

Report Type	Due No Later than
Draft Report	01/15/2016
Final Report	01/31/2016

6. **Confidential Information:** All unpublished written data and information provided by SPONSOR to the FGCU Investigators in connection with this Agreement that is designated in writing as "Confidential Information" is confidential and/or proprietary to the SPONSOR and FGCU Investigators shall not publish

or disclose Confidential Information to a third-party or use Confidential Information for any purpose but to render the Research Services, without the prior written consent of SPONSOR.

The obligations of non-use and non-disclosure shall not apply to information which:

a) at the time of receipt by a FGCU Investigator is in the public domain; or

b) after its receipt by a FGCU Investigator is made public by a third party, unless such publication was improper; or

c) was in the possession of a FGCU Investigator before receipt from SPONSOR or as evidenced by written documentation was developed independently or acquired directly or indirectly from a source wholly independent of the SPONSOR.

d) is the subject of a valid subpoena or is otherwise required by law to be disclosed

In the event of (d) above FGCU is required to give SPONSOR prompt notice thereof so that SPONSOR may seek an appropriate protective order prior to such required disclosure. FGCU will reasonably cooperate with SPONSOR in its efforts to seek such a protective order.

The obligations of this Article pertaining to confidentiality shall survive the termination or expiration of this Agreement for a period of five (5) years.

7. **Publications:** SPONSOR recognizes that FGCU Investigators must have the ability to publish research findings, results or otherwise information gained in the course of research services performed under this agreement in scholarly journals, student dissertations, or other professional forums not so mentioned.

In order to give the SPONSOR an opportunity to review and advise regarding loss of intellectual property and/or to identify any inadvertent disclosure of SPONSOR Confidential Information FGCU will submit to SPONSOR copies of any proposed publication or presentation material involving the results of the Research Services at least thirty (30) days in advance of the submission date for publication or planned presentation date.

SPONSOR recognizes that timing is of the essence and the review of such materials shall be completed within 30-days from the receipt of the planned publication or presentation. FGCU agrees to delete information identified by SPONSOR as Confidential Information from any such proposed publication or presentation material unless SPONSOR agrees to allow its release. If SPONSOR does not respond within the thirty (30) days, said Researchers will have the right to publish the results without further notification or obligation to Sponsor.

At the request of the SPONSOR, FGCU will agree to delay publication or presentation of materials submitted by up to another 30-days (or longer if mutually agreed upon) to allow for preparation and filing of a patent application which SPONSOR has the right to file or to have FGCU file at SPONSOR's request.

8. **Inventions and Patents:**

a) No license to the other Party under any patents is granted or implied by conveying Proprietary or other Information to that Party.

b) If an invention is conceived exclusively by the employees of one Party in connection with the Project, title to said invention and to any patent issuing thereon shall be in the inventing Party's name.

c) In the case of joint inventions, that is inventions made jointly by one or more employees of both Parties hereto, each Party shall have an equal, undivided interest in and to such joint inventions.

d) SPONSOR retains a first option, for consideration, a non-exclusive or exclusive license with a right to sublicense, on terms and conditions to be mutually agreed upon. The option shall extend for a time period of 90 days from the date of disclosure to SPONSOR.

9. **Use of Name for Publicity:** Neither Party shall use the name of the other Party or of any Investigator in any advertising or promotional material without the prior written approval of the other.

10. **Compliance with Law:** The Parties shall comply with all applicable federal, state, local laws and regulations and nothing in this Agreement shall be construed to require either Party to violate such provisions of law or subject either Party to liability for adhering to such provisions of law.

11. **Independent Contractor:** FGCU shall be deemed to be and shall be an independent contractor and, as such, FGCU shall not be entitled to any benefits applicable to employees of Sponsor; Neither Party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, or representation as to any matter. Neither shall be bound by the acts or conduct of the other.

12. **Insurance:** In the performance of all services hereunder:

a) FGCU warrants and represents that FGCU has adequate liability insurance, such protection being applicable to officers, employees, and agents while acting within the scope of their employment by FGCU, and FGCU has no liability insurance policy as such that can extend protection to any other person.

b) Each Party hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of that Party and the officers, employees, and agents thereof.

13. **Termination**: This Agreement may be suspended or terminated at any time by FGCU or SPONSOR by giving written notification to the appropriate Administrative Contact of the other Party.

In the event that either Party shall be in breach, violation or default of any of its obligations under this Agreement and shall fail to remedy such default within sixty days (60) after receipt of written notice thereof, the Party not in default (reserving cumulatively all other remedies and rights under this Agreement and at law and in equity) shall have the option of terminating this Agreement upon written notice thereof.

Upon any termination hereof, FGCU shall issue a final report that summarizes the progress made hereunder. FGCU shall be reimbursed for all non-cancelable costs incurred in the performance of this Agreement; such reimbursement shall not exceed the total amount set forth by Article 3.

14. **Dispute Resolution:** Any dispute concerning performance of the Agreement shall be decided by the appropriate administrative officials of each party, who shall reduce any decision to writing.

15. **Miscellaneous:** This Agreement (a) may not be assigned or transferred by FGCU without SPONSOR's prior written consent, (b) constitutes the entire understanding of the Parties with respect to the subject matter hereof, and (c) may be modified or amended only in a writing signed by duly authorized representatives of both Parties.

16. **Entire Agreement:** This Agreement with its exhibits constitutes the entire agreement between the Parties and supersedes and replaces any and all previous understandings, commitments, or agreements, whether oral or written, relating to the performance of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed by their duly authorized representatives.

The Village of Estero	**Florida Gulf Coast University Board of Trustees**
_____	_____
Nick Batos	**TC Yih**
_____	_____
Mayor	**Associate Vice President for Research**
_____	_____
Date	**Date**

Exhibit A - Scope of Services

GENERAL SCOPE STATEMENT

The CONSULTANT will provide and perform the following services that constitute the GENERAL SCOPE of the BASIC SERVICES under the covenants, terms, and provisions of this SERVICE PROVIDER AGREEMENT.

Overview of Objectives

Estero seeks to critically assess existing infrastructure conditions and needs with the intent of prioritizing improvements and investments in the short term. The overall deliverables of this project is expected to serve as a baseline upon which the Village of Estero elected officials and citizens may make future planning and investment decisions. The specific tasks of this project will include (but not limited to) a comprehensive inventory of existing bicycle and pedestrian facilities, landscaping, and roadways; assess the condition of existing facilities; and make recommendations for improvements.

Overview of Process

The inventory process and analysis will be led by faculty at Florida Gulf Coast University who have expertise in bicycle/pedestrian planning; roadway and pavement evaluation, and land use planning. Advanced and experienced graduate and undergraduate students will assist with the process, especially for data collection.

The key tasks that will be performed include the following:

1. ***Inventory process***. In coordination with Estero subject area representatives, the FGCU team will develop a strategy to inventory on-the-ground conditions. This strategy will include the areas needing field reviews and exclude those for which sufficient information is already available. Streets and roadways that lie in gated communities will not be included in the inventory. However, state, county, and local corridors with the boundaries of the Village of Estero will be inventoried. Faculty and the Estero subject area representatives will conduct training and oversee the inventory and data collection process.
2. ***Initial data collection and analysis***. Conduct a comprehensive inventory of roadway, landscape, and bicycle/pedestrian facilities using existing and new data. The availability of existing data will be identified and new data will be collected through field reviews, otherwise known as 'ground truthing'. All facilities will be mapped using Global Information System (GIS) or other appropriate software.
    a. Bicycle and pedestrian facilities will be assessed for their location, type of facility, safety, and adequacy.
    b. Roadways will be assessed for their condition, including surface distress condition survey (cracks, and raveling) and the timeframe associated with repairs. The assessment will be based on the 2015 Florida Department of Transportation (FDOT) - Pavement Condition Survey Handbook (FDOT 2015). The Condition Survey is a systematic approach to collecting and presenting existing road information. Originally, a pavement's relative ability to serve traffic was determined quite subjectively by visual inspection and experience. Although various sophisticated equipment has been developed

overtime, the visual distress survey has been widely used to assess the condition of roadways. The following will also be included: A surface distress condition survey, limited structural condition survey, and a functional condition survey

c. Landscaping conditions will be inventoried according to existing landscaping, appropriateness to the context, and level of service.

3. ***Document best practices.*** Following facility condition inventory, the information gathered will be analyzed and best practices will be proposed to address recommended improvements. Best practices will recognize any existing rules or guidelines as may be appropriate. The best practices will employ a context-sensitive framework. For example, bike lanes may be appropriate in some areas; whereas shared use pathways may be appropriate in others. In addition, the best practice research will document policy decisions that may be required to achieve the desired outcomes (for example, level of service standards).
4. ***Team meetings.*** The FGCU team (including faculty and students) will host regular meetings with Estero subject area representatives throughout the project duration. Feedback from these meetings will be incorporated as the project progresses.
5. ***Draft and final report.*** A draft and final report will be developed that documents the inventory process, the inventory results, maps, and recommendations. The FGCU team will deliver a preliminary draft for review and comment based on feedback from Estero subject area representatives. A final report will follow.

Time Requirements

The project timeframe will be October 1, 2015 and end on January 31, 2016. A breakdown of all the activities is outlined in Tables 1 and 2.

Table 1: Activities Schedule

Task	Oct 15	Nov 15	Dec 15	Jan 16
1. Inventory process and training				
2. Data collection and analysis				
3. Best practices				
4. Team meetings				
5. Draft and Final Report				

Table 2: Timeframe by Task

Task	**Timeframe**
1. Inventory process and training	10/1/15-10/15/15
2. Data collection and analysis	10/1/15 – 12/31/15
3. Best practices	12/1/15 – 1/15/16
4. Team meetings	10/1/15 - 1/31/16
5. Draft & Final Report a) Draft report due b) Final report due	 1/15/16 1/31/16

Deliverables

1. Map series documenting facility conditions along with GIS locational information and/or other appropriate software to document findings. Landscape base maps may also be included. Up to 20 additional large format maps will be produced upon request for the purpose of generating public input.
2. Meeting notes for team meetings
3. Draft and final report, including inventory, best practices, and recommendations.

Qualification of the Research Team

The research team includes experienced faculty in the College of Arts and Sciences and College of Engineering from Florida Gulf Coast University. Table 3 summarizes the expertise of the key personnel for this project. One of the strengths of the proposed research team is their extensive professional background infrastructure planning (including field measurements, pavement evaluation and material characterization, pavement management and data analysis, and database design). The proposed Principal Investigator (PI), Dr. Margaret Banyan, has participated in broad corridor livability analysis and led the creation of bicycle/pedestrian planning processes. The proposed Co-Principal Investigator (Co-PI), Dr. Claude Villiers, has conducted significant work in testing and evaluation on rutting and cracking of pavements and database design for the Florida Department of Transportation. Dr. Villiers has also worked as a Research Engineer for the University of Florida and Florida Department of Transportation – Pavement Conditions Survey Section.

Table 3: Key Research Team Members.

Name	Expertise	Affiliation	Phone Number
Dr. Margaret Banyan, Principal Investigator	Land use planning; bicycle/pedestrian planning; livable corridor analysis	Department of Political Science and Public Administration, Florida Gulf Coast University	(239) 590-7850
Dr. Claude Villiers, Co-Principal Investigator	Pavement evaluation; material testing and characterization and specification implementation of asphalt materials; database design	Department of Environmental and Civil Engineering, Florida Gulf Coast University	(239) 590-7479

Estimated Budget & Time Requirements

The total budget for this study is $16,113.00. As this is a fixed fee agreement, additional faculty and hours (up to 100% match) are anticipated. An institutional match of student hours in addition to what is requested will be at no additional cost to the Village.

Table 4: Project Budget

Expenses			
Personnel	Hourly	Hours	Estimate
Dr. Margaret Banyan	$47.41 Salary/Fringe	35	$1,659
Dr. Claude Villiers	$73.46 Salary/Fringe	35	$2,571
Graduate Student (1) (10 hours*17 weeks)	$16.15 Salary/Fringe	170	$2,745
Undergraduate Student (3) (10 hours* 17 weeks)	$12.92 Salary/Fringe	510	$ 6,589
Subtotal Personnel Costs			*$ 13,564*
FGCU Overhead			*$ 2,549*
Total Project Expenses			***$16,113***