

## AGREEMENT BETWEEN COUNTY AND CONSTRUCTION MANAGER

This Agreement for a Continuing Construction Manager between COUNTY and CONSTRUCTION MANAGER (this "Agreement"), made and entered by and between **MARION COUNTY**, a political subdivision of the State of Florida, (hereinafter referred to as the "COUNTY") and **D.E SCORPIO CORPORATION**, with a principal address of 3911 West Newberry Road., Gainesville, FL 32054, possessing FEIN# 46-2621773 (hereinafter referred to as the "CONSTRUCTION MANAGER") under seal for the Construction Managers (hereinafter referred to as the "Project"), and COUNTY and CONSTRUCTION MANAGER (individually "Party," collectively "Parties") hereby agreeing as follows:

### WITNESSETH:

In consideration of the mutual covenants and promises contained herein, COUNTY and CONSTRUCTION MANAGER (singularly referred to as "Party," collectively "Parties") hereto agree as follows:

### ARTICLE 1 ASSURANCES, TERM, PROCEDURE, DEFINITIONS

- 1.1 **Assurances.** CONSTRUCTION MANAGER accepts the relationship of trust and confidence established between it and COUNTY (defined herein) by this Agreement. It covenants with COUNTY to furnish its best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of COUNTY. It agrees to furnish efficient business administration and superintendence and use his best efforts to complete the Project (defined herein) in the most expeditious and economical manner consistent with the interest of COUNTY.
- 1.2 **Effective Date, Term.** This Agreement approved by the Board of County Commissioners on April 6, 2021 shall be effective on the last signature date set forth below Unless sooner terminated as provided herein, this Agreement shall remain in force from April 6, 2021 through April 31, 2026. At COUNTY's option this Agreement may be renewed by mutual agreement to cover periods of up to two (2) additional five (5) year periods. **TIME IS OF THE ESSENCE.** All limitations of time set forth in the Contract Documents (defined below) are of the essence. Task Orders may be presumed abandoned after ninety (90) days if CONSTRUCTION MANAGER terminates the Work (defined in Article 1.4(Q) below) without just cause or without proper notification to COUNTY, including the reason for termination, or fails to perform Work without just cause for ninety (90) consecutive days.
- 1.3 **Procedure.** When drawings, specifications and other descriptive documents defining a Project are complete, COUNTY shall issue a Proposal Order to which CONSTRUCTION MANAGER shall respond by issuing a Cost Proposal [for Projects under \$4,000,000 where there is no guaranteed maximum price ("GMP")] or a GMP proposal (for projects \$4,000,000 and over or where the COUNTY requests a GMP (collectively "Proposal(s)"). The COUNTY shall indicate its acceptance of a Proposal, as it may be mutually modified, by issuing a Task Order which shall be signed by the COUNTY and CONSTRUCTION MANAGER, acknowledging the Project GMP amount, if applicable, and the drawings, specifications, qualifications and other descriptive documents upon which the Task Order is based.
- 1.4 **Definitions.**

- A. **Activation.** A written document issued by COUNTY through its Facilities Management authorizing CONSTRUCTION MANAGER to proceed with the construction of a Project.
- B. **Architect-Engineer.** May or may not be on Construction Team, determined on a Project by Project basis.
- C. **Construction Team.** CONSTRUCTION MANAGER, COUNTY (Facilities Management), and when applicable the Architect-Engineer, called the "Construction Team," shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required. The Architect-Engineer will provide leadership during the design phase with support from CONSTRUCTION MANAGER and CONSTRUCTION MANAGER shall provide leadership to the Construction Team on all matters relating to construction.
- D. **Contingency.** A percentage of money reserved by either Party to cover unanticipated Project cost.
1. The use of County's Project Contingency shall be at the sole discretion of COUNTY.
  2. The use of CONSTRUCTION MANAGER's Project Contingency shall be at the sole discretion of COUNTY.
- E. **Contract Documents.**
1. The contract between COUNTY and CONTRACTOR, of which this Agreement is part, consists of the Contract Documents.
  2. The Contract Documents consist of: (a) this Agreement and all exhibits hereto; (b) proposal(s) submitted by CONSTRUCTION MANAGER and accepted by COUNTY in writing, if any; (c) the plans, drawings and specifications for the Projects and Work but only after said plans, drawings and specifications, have been approved in writing by COUNTY; (d) any amendments or addenda executed by COUNTY and CONSTRUCTION MANAGER hereafter; (e) COUNTY approved Change Orders; (f) all construction standards of COUNTY in effect at the time of the performance of the Work; and (g) COUNTY's policies applicable to this Agreement in effect at the time of issuance of an Activation. Upon COUNTY's acceptance of CONSTRUCTION MANAGER's GMP (hereinafter defined) proposal, the Contract Document shall also include the GMP (hereinafter defined) and all exhibits and attachment thereto. Documents not included or expressly contemplated in this Article 1 do not, and shall not, form any part of the Contract Documents.
  3. Should any conflict arise between the Contract Documents and the Agreement, the terms of the Agreement shall govern.
- D. **COUNTY's Project Construction Budget.**
1. COUNTY's funds budgeted and requested for construction of a Project.
  2. COUNTY's Construction Budget for each specific Activation includes:
    - a) All CONSTRUCTION MANAGER Fees, Cost of the Work (defined herein), and,

- b) COUNTY's and CONSTRUCTION MANAGER's construction interface contingencies as defined in Articles 8 and 9.
- 3. This acknowledgement of COUNTY's budgeted funds is not to be construed as CONSTRUCTION MANAGER's GMP, if applicable.

E. **COUNTY's Project Budget.**

- 1. COUNTY's funds budgeted for the development of a Project. Includes:
  - a) COUNTY's Project Construction Budget and
  - b) All other fees, furnishing and equipment and other costs necessary to develop the Project not limited to construction.
- 2. COUNTY's Project Budget will be determined for each specific Project.

F. **Milestone Schedule.** The estimated timeline for the life of the Project that allows the Construction Team to review and identify all of the significant and major Project phases. Milestone schedule shall include for planning, development, construction, evaluation and reporting of the Project's implementation.

G. **Project.** Any new construction, repair, remodeling, renovation, upgrading and/or expansion proposed by the COUNTY in a Proposal Order. The cost of such individual project is subsequently defined in a Proposal and accepted by the COUNTY in a Task Order.

H. **Project Construction Estimate.** Upon request by COUNTY, CONSTRUCTION MANAGER's provision of current estimate of probable Project construction cost.

I. **Project GMP.** The sum set forth in a Task Order for a Project which CONSTRUCTION MANAGER guarantees not to exceed for such Project.

J. **Project Manager.** The person designated by COUNTY to provide direct interface with CONSTRUCTION MANAGER with respect to COUNTY's responsibilities.

K. **Proposal.** CONSTRUCTION MANAGER's proposal for completing a Project. Said Proposal shall include the proposed guaranteed maximum price, if applicable, for the construction of a Project based upon the drawings and specifications, qualifications, and other documents. All Proposals submitted to COUNTY by CONSTRUCTION MANAGER must include the following:

- 1. Project GMP
  - a) If applicable, for the construction of such Project based upon the Drawings and Specifications, qualifications and other documents;
- 2. Scope of Work;
- 3. Schedule of Values;
  - a) Must include accurate unit pricing in order to be utilized for change order requests, pay requests and to determine pricing to extract from the contract in the case of COUNTY self-performing any of the Work.
- 4. List of proposed direct purchase materials and associated costs;
  - a) Must meet the State of Florida requirements for direct purchases. CONSTRUCTION MANAGER is responsible for determining which materials meet the requirements of the State of Florida. CONSTRUCTION MANAGER is responsible for all direct purchase materials stored on site.

5. Number of days for substantial and final completion; and
  6. List of proposed Subcontractors (defined in Article 5.1 below).
- L. **Proposal Order.** An Order issued by COUNTY directing CONSTRUCTION MANAGER to submit a Proposal. CONSTRUCTION MANAGER shall be selected for consideration based on its Firm's expertise and past performance on COUNTY Projects.
  - M. **Substantial Completion.** The stage in the progress of the Work when it is sufficiently complete in accordance with the governing documents so that COUNTY may enjoy beneficial use or occupancy of the Work (although may not be actually occupied) and can utilize it for its intended purpose.
  - O. **Task Order.** An order issued by COUNTY to CONSTRUCTION MANAGER to prepare to perform a Project. Actual performance is begun upon issuance of an Activation (see above). COUNTY's issuance of a Task Order demonstrates its acceptance of CONSTRUCTION MANAGER's Proposal for a Project.
  - P. **Value Engineering.** The consideration of alternative materials and methods to achieve desired results at an economic savings. All savings as a result of Value Engineering shall be returned to COUNTY. These dollars may be utilized in other areas of a Project upon prior written approval by COUNTY.
  - Q. **Work.** The construction and other services required by the Contract Documents whether completed or partially completed, and includes all other labor, material, equipment and services provided or to be provided by CONSTRUCTION MANAGER whether performed by CONSTRUCTION MANAGER or on its behalf to fulfill CONSTRUCTION MANAGER's obligations during the construction phase of each specific Project solicited by COUNTY.

## **ARTICLE 2**

### **CONSTRUCTION MANAGER'S SERVICES**

- 2.1 The services which CONSTRUCTION MANAGER shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.
- 2.2 **PROJECT MANAGEMENT PROGRESS REPORT (PMPRS).**
  - 2.2.1 **General.**
    - A. Commencing immediately after Task Order award, CONSTRUCTION MANAGER shall implement and utilize throughout the life of this Agreement all subsystems of the Project Management Progress Report System hereinafter referred to as "PMPRS." The Parties acknowledge this record keeping software is utilized throughout the industry and permits COUNTY to access needed records and monitor CONSTRUCTION MANAGER performance.
    - B. The reports, documents, and data to be provided shall represent an accurate assessment of each current status of the Project and of the Work remaining to be

accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to COUNTY monthly and shall accompany each pay request.

- C. The PMPRS shall be described in terms of the following major subsystems (each in turn described below) for Projects in excess of sixty (60) days:
1. Narrative Reporting, on a monthly basis (see Article 2.2.2 below);
  2. Schedule Control, on a monthly basis (see Article 2.2.3 below);
  3. Cost Control, and estimating (see Article 2.2.4 below); and
  4. Project Accounting (see Article 2.2.5 below).

**2.2.2 Narrative Reporting Subsystem.**

- A. CONSTRUCTION MANAGER shall prepare written reports as described hereunder.
- B. The Narrative Reporting Subsystem shall include the following reports:
1. A Monthly Executive Summary;
  2. A Monthly Cost Narrative describing the current construction cost estimate status of the Project; and
  3. A Monthly Scheduling Narrative.

**2.2.3 Schedules Control Subsystem – Master Project Schedule.** Upon the issuance of an Activation for each Project, the Construction Team, shall submit a master Project schedule covering the planning and design approvals, construction and COUNTY occupancy of the Project. The master Project schedule shall be produced and updated monthly throughout the Project. The type of schedule (i.e., CPM, bar chart, etc.) will be determined based on the complexity of the Project.

**2.2.4 Cost Control Subsystem.** The operation of this subsystem shall provide sufficient timely data and detail to allow the Construction Team to track costs.

**2.2.5 Project Accounting Subsystem.** The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the Project. These reports will be produced monthly:

- A. **Costs Status Report.** A presentation of COUNTY's Project Construction Budget, estimate, and base commitment (awarded subcontracts and purchase orders) for any given Project. It shall show approved Change Orders for each Project which when added to the base commitment will become the total commitment. Pending Change Orders will also be shown to produce the total estimated probable cost to complete the Work.
- B. **Payment Status Report.** A report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.

**2.3 DESIGN REVIEW AND RECOMMENDATIONS.**

- A. **Review and Recommendations.** CONSTRUCTION MANAGER shall:
1. Familiarize itself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications;

2. Follow the development of design from Preliminaries through Working Drawings;
3. Make recommendations with respect to the selection of systems and materials, and cost reducing alternatives including assistance to the Architect- Engineer, and COUNTY in evaluating alternative comparisons versus long term cost effects;
4. Make evaluations that speak to the benefits of the speed of erection and early completion of the Project;
5. Furnish pertinent information as to the availability of materials and labor that will be required;
6. Submit to the COUNTY and Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality;
7. Call to the Project Director's and the Architect-Engineer's attention any defects found in the design, drawings and specifications or other documents;
8. Prepare an estimate of the construction cost. CONSTRUCTION MANAGER shall promptly notify the Architect-Engineer's and COUNTY, in writing, of any defects found in the Contract Documents for any Project when they are discovered, as well as any defects found in the design documents for any Project, including, without limitation, the drawings and specifications set forth in any Proposal Order affecting such Project;
9. Not be responsible to ascertain that the drawings and specifications are in accordance with applicable laws, rules or regulations; and
10. Not assume any design liability.

B. **Separate Contracts Planning.** CONSTRUCTION MANAGER shall review the design with the Architect-Engineer and make recommendations to COUNTY and to the Architect-Engineer with respect to dividing the Work in such manner as will permit CONSTRUCTION MANAGER to take bids and award separate construction subcontracts on the current schedule while the design is being completed. CONSTRUCTION MANAGER shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by COUNTY.

C. **Interfacing.** CONSTRUCTION MANAGER shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all Work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the Work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate CONSTRUCTION MANAGERS.

D. **Jobsite Facilities.**

1. CONSTRUCTION MANAGER shall arrange for all jobsite facilities necessary to enable the CONSTRUCTION MANAGER and the COUNTY's representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction.

2. Tangible personal property, otherwise referred to as jobsite facilities, include but are not limited to such things as trailers, toilets, typewriters, computers and any other equipment necessary to carry on the Project.

E. **Weather Protection.** CONSTRUCTION MANAGER shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the Work in periods when extreme weather conditions are likely to be experienced.

## 2.4 **CONSTRUCTION PHASE.**

### A. **CONSTRUCTION MANAGER's Staff.**

1. CONSTRUCTION MANAGER shall maintain sufficient off-site support staff, and competent staff at the Project site authorized to act on behalf of CONSTRUCTION MANAGER to coordinate, inspect and provide general direction of the Work and progress of the Subcontractors (defined in Article 5.1 below).
2. CONSTRUCTION MANAGER on-site staff shall be present at all times when Subcontractors are present on construction site. COUNTY reserves the right to verify times sheets for onsite supervision

B. **Lines of Authority.** CONSTRUCTION MANAGER shall establish and maintain lines of authority for CONSTRUCTION MANAGER's Staff identified in Article 2.4(A) above, and shall provide this information to COUNTY, its representatives, the Subcontractors (defined in Article 5.1), and the Architect-Engineer, in order to provide general direction of the Work and progress of the various phases and the several Subcontractors. COUNTY and the Architect-Engineer may attend meetings between CONSTRUCTION MANAGER and its Subcontractors; however, such attendance shall not diminish either the authority or responsibility of CONSTRUCTION MANAGER to administer the Subcontractors.

### C. **Solicitation of Bids.**

CONSTRUCTION MANAGER shall prepare invitation for bids, or requests for proposals when applicable, for all procurements of long lead items, materials and services, for Subcontractor contracts (Subcontractor is defined in Article 5.1 below) and for the jobsite utilities. Such invitation for bids shall be prepared in accordance with the following guidelines:

1. Contracts not exceeding \$25,000 may be entered into by CONSTRUCTION MANAGER with the firm that submits the lowest responsive written quotation. CONSTRUCTION MANAGER shall obtain a minimum of three (3) written quotations. These quotations shall be entered on a bid tabulation sheet and a copy of such tabulation shall be made available to COUNTY upon request. The accepted quotation shall be confirmed by written contract or purchase order to the low bid firm defining the scope and quality of Work to be provided.
2. Contracts exceeding \$25,000. may be entered into by CONSTRUCTION MANAGER with the firm that is qualified and submits the lowest responsive proposal. CONSTRUCTION MANAGER shall request at least three (3) firms to submit written proposals based on a written scope of work,

drawings and/or specification. A tabulation of the results shall be furnished to COUNTY.

D. **Bonds.**

1. CONSTRUCTION MANAGER shall be responsible for obtaining and maintaining 100% performance and a 100% payment Bonds in an amount no less than the total construction cost inclusive of CONSTRUCTION MANAGER's Fess and on forms acceptable to COUNTY for each Project assigned.
2. CONSTRUCTION MANAGER's bond premiums shall be disclosed and represented to COUNTY and shall be included in the Cost of the Work (see Article 9).
3. Each payment and performance bond shall clearly state that the bond is executed pursuant to Section 255.05, Florida Statutes, as amended, and is subject to the notice and time limitations provided therein, and shall otherwise comply with the provisions of said statute and such other provisions of applicable Laws, as the same may be amended from time-to-time.

E. **Quality Control.** CONSTRUCTION MANAGER shall develop and maintain a program, acceptable to COUNTY and Architect-Engineer, to assure quality control of the construction. CONSTRUCTION MANAGER shall supervise the work of all Subcontractors (defined in Article 5.1 below) providing instructions to each when their work does not conform to the requirements of the plans and specifications and CONSTRUCTION MANAGER shall continue to exert its influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work.

F. **Subcontractor Interfacing.** CONSTRUCTION MANAGER shall be the single point of interface with all Subcontractors (defined in Article 5.1 below) for COUNTY and all of its agents and representatives including the Architect-Engineer. CONSTRUCTION MANAGER shall negotiate all Change Orders, field orders and request for proposals, with all affected Subcontractor and shall review the costs of those proposals and advise COUNTY and Architect-Engineer of the cost validity and reasonableness, acting in COUNTY's best interest prior to requesting approval of each Change Order from COUNTY.

G. **Permits.** COUNTY shall secure all necessary development permissions from the appropriate authorities, the cost of which will be paid for by COUNTY. CONSTRUCTION MANAGER shall secure all required building permits and specialty permits related to construction.

H. **Jobsite Requirements.**

1. During construction CONSTRUCTION MANAGER shall provide, through its core staff or through additional staff as included in the Proposal, jobsite requirements that assure proper documentation, including but not limited to such things as the following:
  - a) Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc;.



- b) Maintain a roster of companies on the Project with names and telephone numbers of key personnel;
  - c) Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline;
  - d) Provide a safety program for the Project to meet OSHA requirements. Monitor for Subcontractor (defined in Article 5.1 below) compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice; and
  - e) Provide a quality control program as developed under Article 2.4 (E) hereinabove.
2. CONSTRUCTION MANAGER shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as part of the Cost of the Work (defined in Article 9 below):
- a) Schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
  - b) The printing and distribution of all required bidding documents and shop drawings

H. **Jobsite Administration.**

During construction CONSTRUCTION MANAGER shall provide, through its core staff or through additional staff as included in the Proposal, jobsite administrative functions to assure proper documentation, including but not limited to such things as the following:

1. **Job Meetings.** Hold weekly progress and coordination meetings to provide for any easy flowing Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each Subcontractor's (defined in Article 5.1 below) work. Review and implement revisions to the schedule. Monitor and promote safety requirements.
2. **Shop Drawing Submittals/Approvals.** Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Architect-Engineer of such drawings for action, and closely monitor their submittal and approval process.
3. **Material and Equipment Expediting.** Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all Subcontractors.

4. **Payments to Subcontractor.** Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments.
  5. **Document Interpretation.** Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer.
  6. **Reports and Project Site Documents.** Record the progress of the Project. Submit written progress reports to COUNTY and the Architect-Engineer including information on each Subcontractor's work, and the percentage of completion. Keep a daily log available to COUNTY, the Architect-Engineer and the Permitting Authority inspectors.
  7. **Subcontractor's Progress.** Prepare periodic punch lists for each Subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
  8. **Substantial Completion.** Ascertain when the Work or designated portions thereof are ready for COUNTY's substantial completion inspection. From COUNTY's list of incomplete or unsatisfactory items, prepare a schedule for their completion indicating completion dates for COUNTY's review.
  9. **Final Completion.** Monitor each Subcontractor's performance on the completion of the Project and provide notice to COUNTY and Architect-Engineer that the Work is ready for final inspection. Secure and transmit to COUNTY, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books.
  10. **Start-Up.** With COUNTY's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing.
- I. **COUNTY Occupancy.**  
CONSTRUCTION MANAGER shall provide services during the design and construction phases, which will provide a smooth and successful COUNTY occupancy of the project and provide mark up progress prints to provide as much accuracy as possible.
  - J. **Warranty.**  
Where any Work is performed by CONSTRUCTION MANAGER's own forces or by a Subcontractor (defined in Article 5.1 below) under contract with CONSTRUCTION MANAGER, CONSTRUCTION MANAGER shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the drawings and specifications. CONSTRUCTION MANAGER further agrees to correct all Work found by COUNTY to be defective in material and workmanship or not in conformance with the drawings and specifications for a period of one (1) year from the date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in

the trade sections of the specifications. CONSTRUCTION MANAGER shall collect and deliver to COUNTY any specific written warranties given by others as required by the Contract Documents.

### **ARTICLE 3 COUNTY'S RESPONSIBILITIES**

- 3.1 **COUNTY's Information.** COUNTY shall provide full information regarding its requirements for the Project.
- 3.2 **COUNTY's Representative.** COUNTY shall designate a representative who shall be fully acquainted with the Project and shall define the lines of COUNTY authority to approve changes in any Project. COUNTY shall render decisions promptly and furnish information expeditiously
- 3.3 **Architect and Engineer's Agreement.** COUNTY may retain an Architect-Engineer for design and to prepare construction documents for the Project. The Architect-Engineer's services, duties and responsibilities are described in the contract between COUNTY and the Architect-Engineer, a copy of which will be furnished to CONSTRUCTION MANAGER.
- 3.4 **Site Survey and Reports.** COUNTY shall provide all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description, if available.
- 3.5 **Approvals and Easements.** COUNTY shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.6 **Legal Services.** COUNTY shall furnish such legal services as may be necessary in order to provide the items set forth in Article 3.5 above.
- 3.7 **Drawings and Specifications.** CONSTRUCTION MANAGER will be furnished a reproducible set of all copies of drawings and specifications reasonably necessary and ready for printing.
- 3.8 **Cost of Surveys & Reports.** The services, information, surveys and reports required of COUNTY by Articles 3.4 through 3.7 above shall be furnished with reasonable promptness in accordance with the approved schedule at COUNTY's expense, and CONSTRUCTION MANAGER shall be entitled to rely upon the accuracy and completeness thereof.
- 3.9 **Project Fault Defects.** If COUNTY becomes aware of any fault in the Project or non-conformance with the drawings and specifications, it shall give prompt written notice thereof to CONSTRUCTION MANAGER and Architect-Engineer.
- 3.10 **Funding.** COUNTY shall furnish in accordance with the established schedule, reasonable evidence satisfactory to CONSTRUCTION MANAGER that sufficient funds will be available and committed for the cost of each part of the Project. CONSTRUCTION MANAGER shall not commence any work unless authorized in writing by the COUNTY.

- 3.11 **Lines of Communication.** COUNTY shall coordinate all communication between end user, Architect-Engineer and CONSTRUCTION MANAGER. Any communication with Subcontractors (defined in Article 5.1 below) shall be through the CONSTRUCTION MANAGER to and from COUNTY. This method of communication is most effective in maintaining Project schedules and quality.
- 3.12 **Lines of Authority.** COUNTY shall establish and maintain lines of authority for all COUNTY personnel and shall provide this definition to the CONSTRUCTION MANAGER and all other affected parties. These lines of authority shall be established per Project.
- 3.13 **Hazardous Materials.** COUNTY shall remain responsible for hazardous materials except as specifically agreed upon with CONSTRUCTION MANAGER. Otherwise, CONSTRUCTION MANAGER shall not be responsible for the removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, any asbestos or asbestos-related products that may be required in connection with the Work. CONSTRUCTION MANAGER shall cooperate with COUNTY and separate abatement contractors in the identification, abatement, removal, encapsulation, transportation and disposal of asbestos containing or hazardous materials. CONSTRUCTION MANAGER or any Subcontractor bringing hazardous materials as described by federal guidelines, to the site, shall have the responsibility to perform proper disposal of the same. Any hazardous material not specifically shown on the Construction Documents or readily observable in the Work shall be considered a concealed condition and will not be the responsibility of CONSTRUCTION MANAGER. Additions or deletions to the Work of CONSTRUCTION MANAGER for each Project shall be by appropriate Change Order when such materials are encountered.

#### **ARTICLE 4** **PERMITTING AND BUILDING CODE INSPECTION**

- 4.1 Before construction can begin, it is necessary for COUNTY to obtain any required development permissions from the applicable authorities.
- 4.2 Construction shall be inspected for code compliance, compliance with drawings and specifications, and quality by inspectors from the authorities having jurisdiction and COUNTY.
- 4.3 **Permits.** CONSTRUCTION MANAGER shall obtain all required building and specialty permits prior to beginning construction.

#### **ARTICLE 5** **SUBCONTRACTS**

- 5.1 **Definition.** The term "Subcontractor" as used in this Agreement shall mean a person or organization (other than COUNTY) having a direct contract with CONSTRUCTION MANAGER to perform any of the Work at the jobsite. Nothing contained in the Contract Document shall create any contractual relationship between COUNTY or Architect-Engineer and any Subcontractor.

5.2 **Approval of Subcontractors.** A list of Subcontractors must be submitted with the Proposal for each Project. COUNTY has the right to approve or disapprove of said Subcontractors. Subcontractors that have been suspended or disbarred by the COUNTY shall not be authorized to perform work on any County Projects. It is the responsibility of CONSTRUCTION MANAGER to obtain unit prices from each of its Subcontractors so CONSTRUCTION MANAGER's pay requests may be tied back by COUNTY to the Proposal's schedule of values.

5.3 **Required Subcontractor Qualifications and Subcontract Conditions.**

5.3.1 **Subcontractual Relations.**

A. By an appropriate written agreement, CONSTRUCTION MANAGER shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to CONSTRUCTION MANAGER by the terms of the Contract Documents, and to assume toward CONSTRUCTION MANAGER all the obligations and responsibilities which CONSTRUCTION MANAGER by these documents, assumes toward COUNTY and the Architect-Engineer.

B. CONSTRUCTION MANAGER shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Article 5.3. CONSTRUCTION MANAGER shall identify and cause the removal of any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. CONSTRUCTION MANAGER shall be responsible to ensure each Subcontractor shall similarly be bound to make copies of all Contract Documents available to its sub-subcontractors to which the sub-subcontractor will be bound by this Article 5.3. Any Subcontractor shall also be bound to perform the same process of identifying and removing and sub-subcontract contractual provisions at variance with the Contract Documents.

5.3.2 **Subcontract Requirements.** At the discretion of CONSTRUCTION MANAGER, a Subcontractor may be required to be bondable and shall meet other reasonable prequalification and experience requirements as established by CONSTRUCTION MANAGER.

5.4 **Subcontracts to be Provided.** If requested by COUNTY, CONSTRUCTION MANAGER shall provide a copy of each subcontract to COUNTY. COUNTY reserves the right to exclude any Subcontractor from COUNTY Projects in advance.

5.5 **Subcontract Rights.** All subcontracts shall afford CONSTRUCTION MANAGER rights against the Subcontractor which correspond to those rights afforded to COUNTY against CONSTRUCTION MANAGER herein.

## ARTICLE 6

### **SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

6.1 At the time a Task Order is entered, , a Project Substantial Completion date, a Project final completion date and a COUNTY occupancy date, if applicable, shall also be established by the Construction Team. CONSTRUCTION MANAGER acknowledges that failure to timely complete the Project within the approved schedule may result in damages

to COUNTY. Further, the Parties acknowledge that it would be extremely difficult, if not impossible, to ascertain COUNTY's actual damages with any degree of certainty in the event CONSTRUCTION MANAGER fails to timely achieve Substantial Completion of the Work within the schedule

- A. If there is a fixed schedule the Parties shall agree, as part of the Task Order, to a sum for liquidated damages to be paid to COUNTY for CONSTRUCTION MANAGER's failure to timely achieve Substantial Completion of the Project.
- B. CONSTRUCTION MANAGER hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the Parties agree represents a fair and reasonable estimate of COUNTY's actual damages at the time of contracting if CONSTRUCTION MANAGER fails to timely achieve Substantial Completion of the Project.

**ARTICLE 7**  
**GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION**  
**(Applicable to Projects \$4,000,000 and over)**

- 7.1 When the documents are sufficiently complete to establish the scope of work for a Project or any portion thereof, as generally defined by a design document which is to be used only as a guide in developing the specifications and plan data necessary to establish a guaranteed maximum price, or at such time thereafter designated by COUNTY, CONSTRUCTION MANAGER will establish and submit in writing to COUNTY a Proposal, guaranteeing the maximum price to COUNTY, for the construction cost of the Project or designated part thereof. Such Proposal shall be subject to modification for changes in the Project as provided in Article 10 below. However, the actual price paid for the Work by the COUNTY shall be the actual cost of all Project subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined under Article 9 below, plus CONSTRUCTION MANAGER's fees or the GMP, whichever is less when the Work is complete.
- 7.2 The GMP will only include those taxes in the cost of the Project which are legally enacted at the time the GMP is established. COUNTY shall be responsible for any after imposed taxes.
- 7.3 At the time of submission of a Proposal, CONSTRUCTION MANAGER shall verify the time schedule for activities and work which were adopted by the Construction Team and used to determine CONSTRUCTION MANAGER's Cost of the Work (defined in Article 9 below),
- 7.4. **Contingency.**
  - A. In addition to the Cost of the Work, a GMP will include an agreed upon sum as the construction Contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction.
  - B. The use of the Contingency shall be at the sole discretion of CONSTRUCTION MANAGER.
  - C. CONSTRUCTION MANAGER shall provide a monthly Contingency status in the PMPRS report for each Project under construction.
  - D. If bids are received below the applicable line items in the GMP, the surplus will be added to the Contingency. If bids are received above the applicable line item in

the GMP, the deficiency will be taken from the Contingency as approved and negotiated with COUNTY; however such events shall not be cause to increase the GMP.

- 7.5 In the event that the aggregate of Cost of the Work (defined herein) and CONSTRUCTION MANAGER's fees is less than the GMP after giving effect to adjustments for changes in the Work and any other adjustment(s) which may be called for herein, then the difference between the Cost of the Work (defined herein), including CONSTRUCTION MANAGER's fee on the one hand and the GMP on the other hand, is defined herein as "savings". All savings shall inure and be paid to COUNTY.
- 7.6 If bids are not received for a portion of the Work at or below the applicable line item amount in the GMP, the CONSTRUCTION MANAGER reserves the right to perform that portion of the Work or negotiate for its performance for the specified line item lump sum amount or less. (See Exhibit A –Scope of Services)

**ARTICLE 8**  
**CONSTRUCTION MANAGER'S FEES AND GENERAL CONDITIONS**

8.1 In consideration of the performance of the Task Order, COUNTY agrees to pay CONSTRUCTION MANAGER as compensation for his services, fees as set forth in Articles 8.1.1 and 8.1.2.

8.1.1 **The Preconstruction Phase Services.**

A. At COUNTY's sole discretion and upon COUNTY's written direction, pursuant to a duly issued and executed Proposal Order, CONSTRUCTION MANAGER shall perform the Preconstruction Phase Services. CONSTRUCTION MANAGER shall coordinate the preparation of the Contract Documents by consulting with COUNTY and the Architect/Engineer regarding Drawings and Specifications as they are being prepared, and recommending alternate solutions whenever design details affect construction feasibility, cost or schedules, including, without limitation, providing Value Engineering options. CONSTRUCTION MANAGER shall promptly notify the Architect/Engineer and COUNTY, in writing, of any apparent defects in the Contract Documents. It is not CONSTRUCTION MANAGER's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws or to identify errors, inconsistencies or omissions in the Contract Documents. However, if the CONSTRUCTION MANAGER recognizes that portions of the Drawings and Specifications are at variance with laws, or that they contain errors, inconsistencies or omissions, the CONSTRUCTION MANAGER shall promptly notify the Architect/Engineer and COUNTY in writing.

B. CONSTRUCTION MANAGER shall coordinate and integrate the Milestone Schedule with the services and activities of the Construction Team.

C. **Construction Estimate.**

- 1. CONSTRUCTION MANAGER shall provide a preliminary evaluation of COUNTY's Project program and budget. At the request of COUNTY, CONSTRUCTION MANAGER shall prepare and deliver to COUNTY and the Architect/Engineer, Construction Estimates as follows:
  - a) A preliminary Construction Estimate;

- b) An itemized and detailed Construction Estimate with supporting data; and
  - c) A further refined Construction Estimate setting forth any adjustments to the previously submitted Construction Estimates along with a memorandum explaining any changes.
2. If any Construction Estimate submitted by CONSTRUCTION MANAGER exceeds any previously approved Construction Estimate or COUNTY's budget, the CONSTRUCTION MANAGER shall make appropriate recommendations to COUNTY, including, without limitation, recommendations to modify the design, to reduce the scope of the Work and to reduce construction costs.
- D. CONSTRUCTION MANAGER shall meet with COUNTY and others, at such times, and with such frequency, as COUNTY may require during the Preconstruction Phase.

**8.1.2 Fees For Preconstruction and Construction Phase.**

- A. For Preconstruction Phase Services, at COUNTY's discretion a separate Lump Sum all-inclusive Cost Proposal will be submitted for approval on each individual Project over \$500,000.
- B. For indirect overhead, profit and general operating expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the construction phase, the fee shall be as set forth in Exhibit C. The amount of this preconstruction fee shall be deducted from the total Project proposal cost once construction drawings are completed and funding has been identified for Project to begin.

**8.2 General Conditions Costs.** CONSTRUCTION MANAGER's General Conditions Costs shall mean necessary and reasonable costs directly attributable to the Work, including telephone service charges of the field office direct; Project management; field supervision; supervisory expenses; field office and equipment at the Project site; postage and delivery; safety and first aid; preparation and maintenance of the schedules; and the preparation of as-built drawings; which CONSTRUCTION MANAGER's General Conditions Costs shall be negotiated and agreed to by both Parties as a component of the Cost of the Work (see Article 9 below), and shall be a fixed amount during the entire Construction Phase of each Project, as set forth in the Task Order attributable thereto.

**ARTICLE 9**  
**COST OF THE WORK**

9.1 COUNTY agrees to pay CONSTRUCTION MANAGER for the Cost of the Work as defined in this Article 9. Such payment shall be in addition to CONSTRUCTION MANAGER's fees stipulated in Article 8. Direct cost items will be negotiated on each Project and identified in the respective Task Order.



9.2 **Definition.** The term "Cost of the Work" shall mean costs necessarily incurred in the Project during the Construction Phase for Construction services and paid or payable by CONSTRUCTION MANAGER which are not included in the fees. Such costs shall include the items set forth below in this Article 9. CONSTRUCTION MANAGER may request an annual increase in the rates stated below, subject to COUNTY's approval.

9.3 **Direct Cost Items.**

- A. The cost of all materials, supplies and equipment incorporated into the Work, or suitably stored on the project site or at a bonded warehouse pursuant to COUNTY's written direction, including cost of transportation and storage thereof, which are not included within the payments otherwise made to, or through, a Subcontractor.
- B. Payments due to a Subcontractor from CONSTRUCTION MANAGER or made by CONSTRUCTION MANAGER to subcontractors for their work performed pursuant to contract under this Agreement.
- C. Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Work, cost on such items used but not consumed which may be turned over to COUNTY at the end of the Project and cost less salvage value on such items used but not consumed which remain the property of CONSTRUCTION MANAGER.
- D. Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from CONSTRUCTION MANAGER or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a subcontractor or CONSTRUCTION MANAGER's own forces in the performance of the Work, at rental charges consistent with those prevailing in the area. Any tools or equipment purchases on behalf of COUNTY will remain the property of the COUNTY.
- E. Sales use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which CONSTRUCTION MANAGER is liable.
- F. Cost of surveys, measurement and layout work reasonably required for the execution of the Work and not provided by COUNTY.
- G. Costs for trash and debris control and removal from the site.
- H. Cost incurred due to an emergency affecting the safety of persons and property.
- I. Legal costs reasonably and properly resulting from prosecution of the Project for COUNTY, including handling claims for changes by subcontractors and vendors, subject to the following limitations:
  - 1. COUNTY approved incurring such costs in advance, which approval shall not be unreasonably denied; and

2. The legal costs were not incurred as a result of CONSTRUCTION MANAGER's own negligence or default.
  3. This Article 9.2 (I) does not provide for payment of legal costs incurred in preparing or asserting claim or requests, by CONSTRUCTION MANAGER itself, for Change Orders or in enforcing the obligations of this Agreement.
- J. All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the CONSTRUCTION MANAGER's fees and CONSTRUCTION MANAGER's General Conditions as set forth in Article 8.
  - K. If approved by COUNTY, CONSTRUCTION MANAGER, when qualified, may perform all or a portion of the Work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct Cost of the Work.
  - L. Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the Project.
  - M. Costs for watchman and security services if required for the Project with prior COUNTY approval.
  - N. Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space.
  - O. Costs for such temporary facilities during construction, as approved by COUNTY, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
  - P. All permit fees, inspection and filing fees other than those fees provided by COUNTY.
  - Q. Cost to protect the Work from weather damage.
  - R. Cost of temporary safety-related protection including barricades and safety equipment.
  - S. Cost of testing laboratories for tests required by the Contract Documents, unless provided by COUNTY.
  - T. Royalties and license fees paid for the use of a particular design, process or product specifically required by the Contract Documents.
  - U. Costs associated with setting up and demobilizing of temporary facilities such as tool sheds, Project field offices, temporary fences, temporary roads, and temporary fire protection.
  - V. CONSTRUCTION MANAGER's General Conditions Costs as set forth in the Task Order.

- W. Costs for any Jobsite items not referenced herein, not normally provided by the Subcontractor, which will be provided by CONSTRUCTION MANAGER as required to complete the Work.
- X. If applicable, add allowance for impact fees.

**ARTICLE 10**  
**CHANGES IN THE PROJECT**

- 10.1 **Construction Change Directives.** COUNTY, without invalidating this Agreement, may order changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions. All changes in the Project not covered by an authorized contingency shall be authorized by a Construction Change Directive and a Change Order, signed by COUNTY, shall be issued to CONSTRUCTION MANAGER incorporating all Construction Change Directives.
  - 10.1.1 A Construction Change Directive is a written order to CONSTRUCTION MANAGER signed by the COUNTY and issued after the execution of this Agreement, authorizing a change in the Project, CONSTRUCTION MANAGER's fee, or the construction completion date. Each adjustment in the Amendment or GMP resulting from a Construction Change Directive shall clearly separate the amount attributable to the cost of the Project.
  - 10.1.2 The increase or decrease in the Task Order amount or Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:
    - A. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the COUNTY;
    - B. By unit prices stated in the Task Order or subsequently agreed upon; and/or
    - C. By cost as defined in Article 9 and a mutually acceptable fixed or percentage fee.
  - 10.1.3 If unit prices are stated in the Task Order or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to the COUNTY or the CONSTRUCTION MANAGER, the applicable unit prices and guaranteed maximum price shall be equitably adjusted.
  - 10.1.4 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or COUNTY furnished information, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the guaranteed maximum price and the completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2 below
- 10.2 **Claims for Additional Cost or Time.**

- A. All claims for additional cost or time shall be made by request for a Change Order submitted as provided in Article 18.
  - B. If CONSTRUCTION MANAGER is delayed at any time in the progress of the Work by any act or neglect of COUNTY or the Architect or of any employee of either or by any separate Contractor employed by COUNTY or by any changes ordered in the Work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond CONSTRUCTION MANAGER's control or by delay authorized by COUNTY pending resolution of disputes, and such delay extends the completion date, the Substantial Completion Date shall be extended by Change Order for such reasonable time as the Construction Team may determine.
- 10.3 **Minor Changes in the Project.** COUNTY shall have authority to order minor changes in the Project not involving an adjustment in the guaranteed maximum price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order.
- 10.4 **Emergencies.** In any emergency affecting the safety of persons or property, CONSTRUCTION MANAGER shall act at its discretion, to prevent threatened damage, injury or loss. Any increase in the GMP or extension of time claimed by CONSTRUCTION MANAGER on account of emergency work shall be determined as provided in this Article 10.

**ARTICLE 11**  
**PAYMENTS TO THE CONSTRUCTION MANAGER**

- 11.1 **Monthly Statements.**
- A. CONSTRUCTION MANAGER shall submit to COUNTY a statement, along with the cost reports required under Article 2.2.5, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Work during the previous period and the amount of the CONSTRUCTION MANAGER's fees.
  - B. Payment by COUNTY to CONSTRUCTION MANAGER of the monthly statement amount shall be made in accordance with the Local Government Prompt Payment Act, Section 218.735, Florida Statutes. Accordingly, five percent (5%) shall be held on CONSTRUCTION MANAGER's fee on all contracts of an amount in excess of Two Hundred Thousand Dollars (\$200,000), and the same shall be retained until final payment is issued. The retainage does not apply to construction services paid for, in whole or in part, with Federal funds and are subject to Federal grantor laws and regulations or requirement that are contrary to any position.
  - C. CONSTRUCTION MANAGER shall similarly retain five percent (5%) from all Subcontractor and supplier payments pursuant to Section 218.735, Florida Statutes.
- 11.2 **Subcontractor Payment.**
- A. CONSTRUCTION MANAGER shall promptly and no later than ten (10) days after receipt of payment from COUNTY, pay all the amount due a Subcontractor less a retainage in accordance with Article 11.1 above. CONSTRUCTION MANAGER may withhold funds from a Subcontractor in accordance with the terms of the

subcontract, after consultation with COUNTY. If instructed, amounts held back shall be credited back to COUNTY until payable.

B. Final payment may be made to certain select Subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of COUNTY.

11.3 **Final Payment.** Final payment constituting the unpaid balance of the Cost of the Work for a Project and the CONSTRUCTION MANAGER's fee, shall be due and payable after the COUNTY has accepted the Project, provided that the Project be then finally completed, that CONSTRUCTION MANAGER has verified by its signature that it has completed all items specified on the attached Exhibit C.

11.4 **Payments for Materials and Equipment.** Payments will be made for material and equipment not incorporated in the Work but delivered and suitably stored at the site or another location subject to prior approval and acceptance by the COUNTY on each occasion.

## **ARTICLE 12**

### **INSURANCE, INDEMNITY AND WAIVERS OF SUBROGATION**

#### 12.1 **General Bond Requirements.**

A. The Parties recognizes that a Project is a public project. Those Projects with a construction price exceeding Two Hundred Thousand (\$200,000) Dollars are required to be bonded pursuant to Section 255.05, Florida Statutes. COUNTY shall have discretion to require payment and performance bonds on small Projects. CONSTRUCTION MANAGER furnish to COUNTY payment and performance bonds on COUNTY's standard form covering the full and faithful performance of the Task Order and the payment of obligations arising hereunder.

B. All bonds must be underwritten by a surety company authorized to issue bonds in the State of Florida.

#### 12.2 **Delivery of Bonds.**

CONSTRUCTION MANAGER shall deliver the required bonds and powers of attorney to COUNTY ten (10) days prior to commencement of the Work.

#### 12.3 **Commercial General Liability.**

A. Coverage must be afforded under a Commercial General Liability policy with limits not less than

1. \$1,000,000 each occurrence and \$1,000,000 **Project Aggregate** for Bodily Injury, Property Damage and Personal and Advertising Injury.

2. \$1,000,000 each occurrence and \$1,000,000 **Project Aggregate** for Products and Completed Operations.

B. Policy must include coverage for Contractual Liability, Independent Contractors and contain no exclusions for explosion, collapse or underground.

- C. Marion County, a political subdivision of the State of Florida its officials, employees and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization or equivalent.
- D. CONSTRUCTION MANAGER's insurance coverage shall be primary insurance as respects the County, its officials, employees and volunteers. Any insurance or self-insurance maintained by COUNTY, its officials, employees or volunteers shall be excess of CONSTRUCTION MANAGER's insurance and shall be non-contributory

12.4 **Business Automobile Liability.**

- A. Coverage must be afforded including coverage for all owned vehicles, hired and non-owned vehicles for bodily injury and property damage of not less than \$1,000,000 combined single limit each accident. In the event CONSTRUCTION MANAGER does not own vehicles, the Contractor/Vendor shall maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
- B. Marion County, a political subdivision of the State of Florida, its officials, employees and volunteers are to be covered as an additional insured in respects to: Liability arising out of activities performed by or on behalf of CONSTRUCTION MANAGER; products and completed operations of CONSTRUCTION MANAGER; or automobiles owned, leased, hired or borrowed by CONSTRUCTION MANAGER. The coverage shall contain no special limitation on the scope of protection afforded to COUNTY, its officials, employees or volunteers. COUNTY requires policies to be endorsed with CA 20 48 or similar endorsement providing equal or broader Additional Insured coverage.
- C. CONSTRUCTION MANAGER's insurance coverage shall be primary insurance as respects COUNTY, its officials, employees and volunteers. Any insurance or self-insurance maintained by COUNTY, its officials, employees or volunteers shall be excess of CONSTRUCTION MANAGER's insurance and shall be non-contributory.

12.5 **Workers Compensation and Employer's Liability.**

- A. Coverage to apply for all employees at STATUTORY Limits in compliance with applicable state and federal laws; if any operations are to be undertaken on or about navigable waters, coverage must be included for the US Longshoremen & Harbor Workers Act.
- B. Employer's Liability limits for not less than \$100,000 each accident \$500,000 disease policy limit and \$100,000 disease each employee must be included.
- C. CONSTRUCTION MANAGER, **and its insurance carrier**, waives all subrogation rights against COUNTY for all losses or damages which occur during this Agreement and for any events occurring during the Term, whether the suit is brought during the Term or not. COUNTY requires all policies to be endorsed with WC00 03 13 Waiver of our Right to Recover from Others or equivalent.
- D. For any CONSTRUCTION MANAGER who has exempt status, COUNTY requires proof of workers' compensation insurance coverage for that CONSTRUCTION

MANAGER's employees. If CONSTRUCTION MANAGER has applied for a workers' compensation exemption, COUNTY does not recognize this exemption to extend to the employees of CONSTRUCTION MANAGER. CONSTRUCTION MANAGER is required to provide proof of coverage for their employees. This applies to all CONSTRUCTION MANAGERS.

12.6 **Professional Liability and/or Errors And Omissions Liability.**

- A. Professional (E&O) Liability must be afforded for wrongful acts for not less than \$1,000,000 each claim, \$1,000,000 policy aggregate.
- B. CONSTRUCTION MANAGER must keep insurance in force until the third anniversary of expiration of this Agreement or the third anniversary of acceptance of work by COUNTY. Evidence of continual coverage must be provided to COUNTY's Risk Manager within ten (10) days of each policy inception or equivalent.

12.7 **Pollution and Remediation Legal Liability (Hazardous Materials).**

For the purpose of this Article 12.7, the term "hazardous materials" includes all materials and substances that are designated or defined as hazardous by Florida or Federal law or by the rules or regulations of Florida or any Federal Agency. If work being performed involves hazardous materials, the Contractor shall procure and maintain any or all of the following coverage, which will be specifically addressed upon review of exposure.

- A. CONSTRUCTION MANAGER's Pollution Liability Coverage  
For sudden and gradual occurrences and in an amount not less than \$1,000,000 per claim arising out of work performed under this Agreement, including but not limited to, all hazardous materials identified under the Agreement.
- B. Asbestos Liability Coverage (if applicable – as a sub-coverage under the pollution policy)  
For sudden and gradual occurrences and in an amount not less than \$1,000,000 per claim arising out of work performed under this Agreement.
- C. Disposal Coverage (if applicable – as a sub-coverage under the pollution policy)  
CONSTRUCTION MANAGER shall designate the disposal site and furnish a Certificate of Insurance from the disposal facility for Environmental Impairment Liability Insurance, covering liability for sudden and accidental occurrences in an amount not less than \$1,000,000 per claim and shall include liability for non-sudden occurrences in an amount not less than \$1,000,000 per claim.
- D. Hazardous Waste Transportation Coverage (if applicable – as a sub-coverage under the pollution policy)  
CONSTRUCTION MANAGER shall designate the hauler and furnish a Certificate of Insurance from the hauler for Automobile Liability insurance with Endorsement MCS90 for liability arising out of the transportation of hazardous materials in an amount not less than \$1,000,000 per claim limit and provide a valid EPA identification number.

**ARTICLE 13**  
**FORCE MAJEURE**

- 13.1 Neither CONSTRUCTION MANAGER nor COUNTY shall be considered to be in default in the performance of its obligations under this Agreement, except obligations to make payments with respect to amounts already accrued, to the extent that performance of any such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control and not a result of the fault or negligence of, the affected Party (a "Force Majeure Event"). If a Party is prevented or delayed in the performance of any such obligations by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party so affected by a Force Majeure Event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable. A Force Majeure Event shall include, but not be limited to acts of civil or military authority (including courts or regulatory agencies), acts of God, war, riot, or insurrection, inability to obtain required permits or licenses, hurricanes and severe floods.

#### ARTICLE 14

**TERMINATION FOR CAUSE BY CONSTRUCTION MANAGER;**  
**TERMINATION FOR CAUSE BY COUNTY;**  
**COUNTY'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION;**  
**TERMINATION WITHOUT CAUSE BY EITHER PARTY**

14.1 **Termination for Cause by CONSTRUCTION MANAGER.**

If a Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction for as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of CONSTRUCTION MANAGER, or if the Project should be stopped for a period of sixty (60) days by CONSTRUCTION MANAGER, for COUNTY's failure to make payments thereon, then CONSTRUCTION MANAGER may, upon seven (7) days written notice to COUNTY, request payment of all work executed, the CONSTRUCTION MANAGER's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by CONSTRUCTION MANAGER.

14.2 **Termination for Cause by COUNTY.**

- A. In addition to any termination provision provided in this Agreement, If any of the following occurs:
1. CONSTRUCTION MANAGER is adjudged a bankrupt or if it makes a general assignment for the benefit of his creditors, or
  2. A receiver is appointed on account of CONSTRUCTION MANAGER's insolvency, or
  3. CONSTRUCTION MANAGER persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials or
  4. CONSTRUCTION MANAGER fails to make prompt payment to Subcontractor for materials or labor, or
  5. CONSTRUCTION MANAGER persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or



6. CONSTRUCTION MANAGER otherwise is guilty of a substantial violation of a provision of this Agreement,

Then COUNTY may, without prejudice to any right or remedy and after giving CONSTRUCTION MANAGER and his surety, if any, seven (7) days written notice, during which period CONSTRUCTION MANAGER fails to cure the violation, terminate the employment of CONSTRUCTION MANAGER and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by CONSTRUCTION MANAGER, and may finish the Project by whatever method it may deem expedient. In such case, CONSTRUCTION MANAGER shall not be entitled to receive any further payment until the Project is finished nor shall it be relieved from his obligations assumed under Article 6.

B. If CONSTRUCTION MANAGER refuses three (3) or more Projects assigned by COUNTY during the duration of this Agreement, COUNTY then reserves the right to refuse to assign future Projects and/or terminate this Agreement with CONSTRUCTION MANAGER

14.3 **COUNTY's Right to Perform CONSTRUCTION MANAGER's Obligations.**

If CONSTRUCTION MANAGER fails to perform any of its material obligations under this Agreement including any obligation it assumes to perform work with its own forces, COUNTY may, after thirty (30) days written notice during which period CONSTRUCTION MANAGER fails to perform such obligation, make good such deficiencies.

14.4 **Termination by Either Party Without Cause.**

A. If COUNTY terminates this Agreement (or any Proposal) for COUNTY's convenience, CONSTRUCTION MANAGER shall stop work immediately. COUNTY shall pay CONSTRUCTION MANAGER the costs incurred through termination plus reasonable termination costs plus fee on such costs. In no event shall CONSTRUCTION MANAGER be entitled to anticipated profits.

B. CONSTRUCTION MANAGER may terminate this Agreement without cause only if no Project is ongoing and with sixty (60) days advance written notice to COUNTY pursuant to Article 20.16 below.

**ARTICLE 15**  
**AMENDMENT; ASSIGNMENT**

15.1 This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both COUNTY and CONSTRUCTION MANAGER.

15.2 Neither COUNTY nor CONSTRUCTION MANAGER shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

**ARTICLE 16**  
**APPLICABLE LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL**

- 16.1 **Applicable Law/Jurisdiction/Venue.** This Agreement is being delivered in the State of Florida, and shall be construed and enforced in accordance with the laws of the State of Florida. The venue for any legal proceeding arising out of this Agreement, shall be Marion County, Florida.
- 16.2 **Waiver of Jury Trial.** EACH PARTY HEREBY AGREES THAT IN ANY LITIGATION OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF THIS AGREEMENT, WHETHER SOUNDING ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE HAD BY A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS WAIVER.

**ARTICLE 17**  
**SOVEREIGN IMMUNITY**

- 17.1 Nothing in this Agreement shall be deemed to waive the sovereign immunity protections provided COUNTY pursuant to Florida law. The Parties expressly agree that any liability of COUNTY or obligation to indemnify CONSTRUCTION MANAGER is limited and shall not exceed the limits set forth in Section 768.28, Florida Statutes. This Article shall survive the termination of this Agreement.

**ARTICLE 18**  
**NOTICE OF CLAIM: WAIVER OF REMEDIES**

- 18.1 **COUNTY Liability.**
- A. Subject to Article 6 above, COUNTY's liability to CONSTRUCTION MANAGER for any claims arising out of or related to the subject matter of this Agreement, whether in contract or tort, including, but not limited to claims for extension of construction time, for payment by COUNTY of the costs, damages or losses because of changed conditions under which the Work is to be performed, or for additional work, shall be governed by the following provisions:
1. All claims must be submitted as a Request for Change Order in the manner as provided.
  2. Within 60 days of submitting its Notice of Claim, CONSTRUCTION MANAGER shall submit to COUNTY its request for Change Order, which shall, include a written statement of the details of the claim, including a description of the Work affected.
- B. CONSTRUCTION MANAGER agrees that COUNTY shall not be liable for any claim that CONSTRUCTION MANAGER fails to submit as a Request for Change Order as provided in this Article 18.1 to the extent COUNTY was prejudiced by such failure.

**ARTICLE 19**  
**INDEPENDENT CONTRACTOR**

- 19.1 In the performance of this Agreement, CONTRACTOR will be acting in the capacity of an "Independent Contractor" and not as an agent, employee, partner, joint venture, or

associate of COUNTY. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures utilized by CONTRACTOR in the full performance of this Agreement.

**ARTICLE 20**  
**ADMINISTRATIVE MATTERS**

20.1 **Public Records Obligations.**

A. If, under this Agreement, CONSTRUCTION MANAGER is providing services and is acting on behalf of COUNTY as provided under Section 119.011(2), Florida Statutes, CONSTRUCTION MANAGER, shall:

1. Keep and maintain public records required by COUNTY to perform the service;
2. Upon request from COUNTY's custodian of records, provide COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of this Agreement if CONSTRUCTION MANAGER does not transfer the records to COUNTY; and,
4. Upon completion of this Agreement, transfer, at no cost, to COUNTY, all public records in possession of CONSTRUCTION MANAGER or keep and maintain public records required by COUNTY to perform the service. If CONSTRUCTION MANAGER transfers all public records to COUNTY upon completion of this Agreement, CONSTRUCTION MANAGER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONSTRUCTION MANAGER keeps and maintains public records upon completion of this Agreement, CONSTRUCTION MANAGER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to COUNTY upon request from COUNTY's custodian of public records in a format that is compatible with the information technology systems of COUNTY.

B. **Unilateral Termination.** If CONSTRUCTION MANAGER fails to provide the public records to COUNTY within a reasonable time or otherwise fails to comply with this Article 20.1, CONSTRUCTION MANAGER may be subject to penalties under Section 119.10, Florida Statutes and may be subject to unilateral cancellation of this Agreement by COUNTY.

C. **Public Records Questions Contact.**

**IF CONSTRUCTION MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, Florida Statutes, TO CONSTRUCTION MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**Public Relations, 601 SE 25th Ave., Ocala, FL 34471**  
**Phone: 352-438-2300 Fax: 352-438-2309**  
**Email: PublicRelations@MarionFL.org**

- 20.2. **Annual Appropriations.** CONSTRUCTION MANAGER acknowledges that during any fiscal year COUNTY shall not expend money, incur any liability, or enter into any agreement which, by its terms, includes the expenditure of money in excess of the amounts budgeted as available for expenditure. COUNTY's performance and obligation to pay CONSTRUCTION MANAGER under this Agreement is contingent upon annual appropriation being made for that purpose. If during the term of this Agreement, COUNTY does not make an annual appropriation necessary to continue its performance under this Agreement, this Agreement shall terminate upon the expiration of the funded fiscal year.
- 20.3. **E-Verify pursuant to §448.095, F.S.**  
Section 448.095, Florida Statutes, requires CONSTRUCTION MANAGER to be registered and use the E-Verify system to verify the work authorization status of all newly hired employees and prohibits CONSTRUCTION MANAGER from entering into this Agreement unless it is in compliance therewith. Information provided by CONSTRUCTION MANAGER is subject to review for the most current version of the State or Federal policies at the time of the award of this Agreement.
- A. COUNTY hereby affirms it is duly registered, uses, and adheres to the practices of the E-Verify system, including those outlined in the clauses below.
  - B. CONSTRUCTION MANAGER has agreed to perform in accordance with the requirements of this Article 20.3 and agrees as follows:
    - a) It certifies and assures COUNTY that CONSTRUCTION MANAGER is currently in fully compliance with Section 448.095, Florida Statutes, it is registered and uses the E-Verify System to verify work authorization status of all newly hired employees.
    - b) COUNTY shall immediately terminate this Agreement if COUNTY has a good faith belief that CONSTRUCTION MANAGER has knowingly violated Section 448.09(1), Florida Statutes, that is, that CONSTRUCTION MANAGER knowingly employed, hired, recruited, or referred either for itself or on behalf of another, private or public employment within the State an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States.
    - c) When CONSTRUCTION MANAGER enters into a contract with an employee, a contractor or a Subcontractor, CONSTRUCTION MANAGER shall obtain from that contracting party ("Contracting Party") an affidavit stating that the Contracting Party does not employ, contract with, or subcontract with an unauthorized alien.
    - d) CONSTRUCTION MANAGER shall maintain a copy of such affidavit for the duration of this Agreement and provide it to COUNTY upon request.
    - e) CONSTRUCTION MANAGER shall immediately terminate the Contracting Party if CONSTRUCTION MANAGER has a good faith belief that the Contracting Party has knowingly violated Section 448.09(1), Florida Statutes, as set forth above.
    - f) If COUNTY has a good faith belief that CONSTRUCTION MANAGER's Contracting Party has knowingly violated Section 448.09(1), Florida Statutes, but that CONSTRUCTION MANAGER has otherwise complied, COUNTY shall promptly order CONSTRUCTION MANAGER to terminate

the Contracting Party. CONSTRUCTION MANAGER agrees that upon such an order, CONSTRUCTION MANAGER shall immediately terminate the Contracting Party. CONSTRUCTION MANAGER agrees that if it should fail to comply with such an order, COUNTY shall immediately terminate CONSTRUCTION MANAGER.

- g) If COUNTY terminates this Agreement with CONSTRUCTION MANAGER, CONSTRUCTION MANAGER may not be awarded a public contract for a least one (1) year after the date of termination.
- h) CONSTRUCTION MANAGER is liable for any additional costs incurred by COUNTY as a result of a termination under this Article 20.3.
- i) Any such termination under this Article 20.3 is not a breach of this Agreement and may not be considered as such.
- j) CONSTRUCTION MANAGER shall maintain records of its registration, use, and compliance with the provisions of the E-Verify system, including the registration and use by its Subcontractors, and to make such records available to COUNTY or other authorized governmental entity.
- k) To comply with the terms of this Employment Eligibility Verification provision is made an express condition of this Agreement and COUNTY may treat a failure to comply as a material breach of this Agreement.

20.4 **Scrutinized Companies pursuant to §287.135, F.S.**

A. **Certification.**

- 1. If this Agreement is for One Million Dollars or more, CONSTRUCTION MANAGER certifies that at the time it submitted its bid or proposal for this Agreement or before entering into this Agreement or renewing same, CONSTRUCTION MANAGER was not then and is not now:
  - a) On the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, or
  - b) Engaged in business operations in Cuba or Syria.
- 2. If this Agreement is for any amount, CONSTRUCTION MANAGER certifies that at the time it submitted its bid or proposal for this Agreement or before entering into this Agreement or renewing same, CONSTRUCTION MANAGER was not then and is not now:
  - a) On the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or
  - b) Engaged in a boycott of Israel.

B. **Termination, Threshold Amount.**

COUNTY may, entirely at its option, terminate this Agreement if it is for One Million Dollars or more, and CONSTRUCTION MANAGER meets any of the following criteria.

- 1. Was entered into or renewed on or after July 1, 2011, through June 30, 2012, and CONSTRUCTION MANAGER is found to have met any of the following prohibitions:
  - a) Submitted a false certification as provided under Section 287.135(5), Florida Statutes, or
  - b) Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes

2. Was entered into or renewed on or after July 1, 2012, through September 30, 2016, and CONSTRUCTION MANAGER is found to have met any of the following prohibitions:
  - a) Submitted a false certification as provided under Section 287.135(5), Florida Statutes, or
  - b) Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, or
  - c) Been engaged in business operations in Cuba or Syria.
3. Was entered into or renewed on or after October 1, 2016, through June 30, 2018, and CONSTRUCTION MANAGER is found to have met any of the following prohibitions:
  - a) Submitted a false certification as provided under Section 287.135(5), Florida Statutes, or
  - b) Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, or
  - c) Been engaged in business operations in Cuba or Syria, or
  - d) Been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or is engaged in a boycott of Israel.
4. Was entered into or renewed on or after July 1, 2018, and CONSTRUCTION MANAGER is found to have met any of the following prohibitions:
  - a) Submitted a false certification as provided under Section 287.135(5), Florida Statutes, or
  - b) Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes
  - c) Been engaged in business operations in Cuba or Syria.
  - d) Been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or is engaged in a boycott of Israel.

C. **Termination, Any Amount.** COUNTY may, entirely at its option, terminate this Agreement if it is for any amount and meets any of the following criteria.

1. Was entered into or renewed on or after July 1, 2018, and
2. CONSTRUCTION MANAGER is found to have been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or is engaged in a boycott of Israel.

D. **Comply; Inoperative.** The Parties agree to comply with Section 287.135, Florida Statutes, as it may change from time to time during the Term. The contracting prohibitions in this Article 20.4 become inoperative on the date that Federal law ceases to authorize the State of Florida to adopt and enforce such contracting prohibitions.

20.5. **Rights of Third Parties.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any

persons other than the Parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any Party to this Agreement.

- 20.6. **Waiver.** No waiver or any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.
- 20.7. **Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.
- 20.8. **Authority To Execute Agreement.** The signature by any person to this Agreement shall be deemed a personal warranty by that person that she/he has the full power and authority to bind the entity for which that person is signing.
- 20.9. **Use of Other Contracts.** COUNTY reserves the right to utilize any COUNTY contract, State of Florida contract, city or county governmental agencies, school board, community college/state university system or cooperative bid agreement. COUNTY reserves the right to separately bid any single order or to purchase any item on this Agreement if it is in the best interest of COUNTY.
- 20.10. **Laws, Permits, and Regulations.** Prior to the performance of any Work hereunder, CONSTRUCTION MANAGER shall obtain and pay for all licenses and permits, as required to perform the Work. CONSTRUCTION MANAGER shall at all times comply with all appropriate laws, regulations, and ordinances applicable to the services provided under this Agreement.
- 20.11. **Books and Records.** CONSTRUCTION MANAGER shall keep records of all transactions, including documentation accurately reflecting the time expended by CONSTRUCTION MANAGER and its personnel. COUNTY shall have a right to request records from CONSTRUCTION MANAGER, and for those records to be made available within a reasonable timeframe depending on method of acquisition.
- 20.12. **Damage to Property.** CONSTRUCTION MANAGER shall be responsible for all material, equipment and supplies sold and delivered to COUNTY under this Agreement and until final inspection of the Work and acceptance thereof by COUNTY. In the event any such material, equipment and supplies are lost, stolen, damaged or destroyed, or COUNTY property, buildings, or equipment is damaged during delivery or unloading, or in the course of the WORK prior to final inspection and acceptance, CONSTRUCTION MANAGER shall replace the same or be returned to original state without additional cost to COUNTY, as applicable.
- 20.13. **Counterparts.** Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent

as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the Parties and conclusive proof of such agreement. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. COUNTY shall determine legibility and acceptability for public record purposes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

20.14 **On-Going Compliance.** The Parties acknowledge that the Agreement may contain provisions prescribed by laws, statutes, and regulations that can change during the Term of the Agreement. The Parties understand and agree that the Agreement is intended to reflect and require the Parties' compliance with all laws at all times. The Parties expressly and specifically agree to perform the Agreement in full compliance with the governing laws, statutes, and regulations, as same may change from time to time.

20.15 **CONSTRUCTION MANAGER Conduct.**

A. These Guidelines govern CONSTRUCTION MANAGER while doing work on COUNTY property, as well as its employees, agents, consultants, and others on COUNTY property in connection with CONSTRUCTION MANAGER's work or at CONSTRUCTION MANAGER's express or implied invitation.

1. **Courtesy and Respect:** COUNTY is a diverse government institution and it is critical that CONSTRUCTION MANAGER and its employees conduct themselves in a manner that is lawful, courteous, businesslike, and respectful of all staff, guests, or visitors.
2. **Language and Behavior:** CONSTRUCTION MANAGER and its employees cannot engage in behavior that is rude, threatening, or offensive. Use of profane or insulting language is prohibited. Harassment of any type, including sexual harassment is strictly prohibited. Abusive, derogatory, obscene or improper language, gestures, remarks, whistling, cat calls or other disrespectful behavior cannot be tolerated. Roughhousing, fighting, fisticuffs, physical threats, destruction of property, vandalism, littering, or physical abuse of anyone on COUNTY property is not permitted under any circumstance.
3. **No Weapons, Alcohol, or Drugs:** The use, possession, distribution, or sale of any weapon, alcohol, illegal drug, or controlled dangerous substance by CONSTRUCTION MANAGER or its employees is prohibited. Offenders will be removed from COUNTY property and/or reported to law enforcement.
4. **Smoking:** CONSTRUCTION MANAGER and its employees are not permitted to smoke in or near any COUNTY buildings.
5. **Fraternization:** CONSTRUCTION MANAGER and its employees may not fraternize or socialize with COUNTY staff.
6. **Appearance:** CONSTRUCTION MANAGER and its employees are required to wear appropriate work wear, hard hats and safety footwear, as the case may be, while on the job. Articles of clothing must be neat and tidy in appearance, and cannot display offensive or inappropriate language, symbols or graphics. COUNTY has the right to decide if such clothing is inappropriate.
7. **Reporting:** CONSTRUCTION MANAGER is required to report any matter involving a violation of these rules or any matter involving health or safety,



including any altercations, to COUNTY's Procurement Services immediately.

- B. CONSTRUCTION MANAGER is responsible for its employees, agents, consultants and guests. If prohibited conduct does occur, CONSTRUCTION MANAGER will take all necessary steps to stop and prevent any future occurrence. Any breach of these conditions will result in the removal of the person responsible from COUNTY property and prohibited actions could result in the immediate termination of any or all of CONSTRUCTION MANAGER's contracts with COUNTY.

20.16 **Notices.**

- A. Except as otherwise provided herein, all written communication between the parties, including all notices, shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be deemed effective if mailed, when deposited in a United States Postal Service mailbox with postage prepaid and if hand delivered, upon personally handing same to the party to whom the notice of other communication is addressed with signed proof of delivery. If otherwise delivered, notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. All parties certify that each has software capable of sending electronic mail read receipts to the other. Any party sending notice by electronic mail acknowledges and accepts the inherent risks that come with same. If notice is delivered in multiple ways, notice shall be considered delivered at the earliest delivery time. CONSTRUCTION MANAGER's and COUNTY's representatives and addresses for notice purposes are:

CONSTRUCTION MANAGER:	D.E Scorpio Corporation
	3911 West Newberry Road, Gainesville, FL
32054	
CONTACT PERSON:	Domenic Scorpio   352-363-6070
COUNTY:	Marion County Facilities Director
	Marion County Facilities Management
	601 SE 25 <sup>th</sup> Ave, Ocala, FL 34471

**A copy of all notices to COUNTY hereunder shall also be sent to:**

Procurement Services Director	County Administrator
Marion County Procurement Services	Marion County Administration
2631 SE 3 <sup>rd</sup> St., Ocala, FL 34471	601 SE 25 <sup>th</sup> Ave., Ocala, FL 34471

- B. Alternatively, the parties may elect to receive said notices by e-mail. COUNTY hereby elects to receive all notices solely by email and designates its email address as [procurement@marioncountyfl.org](mailto:procurement@marioncountyfl.org). If CONTRACTOR agrees to accept all notices solely by e-mail and acknowledges and accepts the inherent risks that come with accepting notices solely by e-mail, CONTRACTOR may designate up to two (2) e-mail addresses: [domenic@scorpioco.com](mailto:domenic@scorpioco.com) and [jennifer@scorpioco.com](mailto:jennifer@scorpioco.com). Designation signifies CONTRACTOR's election to accept notices solely by e-mail.

20.17. **Entire Agreement.** The Contract Documents form the agreement between Parties for the Project and the CONTRACTOR acknowledges receipt of a copy of each and every Contract Document. The Contract Documents represent the entire and integrated agreement between the Parties and supersede prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only in writing. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than COUNTY and CONTRACTOR.

IN WITNESS WHEREOF the Parties have entered into this Agreement, as approved by the Marion County Board of County Commissioners, on the date of the last signature below.

ATTEST:

MARION COUNTY, A POLITICAL SUB-DIVISION OF THE STATE OF FLORIDA

*G.C. Harrell*  
GREGORY C. HARRELL  
MARION COUNTY CLERK OF COURT  
4/6/2021  
DATE

*Jeff Gold*  
JEFF GOLD  
CHAIRMAN  
4/6/2021  
DATE

FOR USE AND RELIANCE OF MARION COUNTY ONLY, APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BCC APPROVED: April 6, 2021  
20Q-161 | Construction Managers

*[Signature]*  
for: MATTHEW G. MINTER  
MARION COUNTY ATTORNEY

WITNESS:

DE SCORPIO CORPORATION

*Jessica MacLaren*  
SIGNATURE  
Jessica MacLaren  
May 28, 2021  
PRINTED NAME DATE

BY: *[Signature]*  
Domenic Scorpio  
PRINTED NAME  
President and CEO  
TITLE

WITNESS:

DATE: May 28, 2021

*Victoria Stoner*  
SIGNATURE  
Victoria Stoner  
May 28, 2021  
PRINTED NAME DATE

## EXHIBIT A

### Scope of Services

CONSTRUCTION MANAGER shall provide the following services for each Project Phase;

#### Program Phase Support Services

1. Participation in Project Team Planning Sessions
2. Master Project Overview Schedule development and maintenance
3. Conceptual Cost Estimating
4. Site Evaluation and Assessment Assistance
5. Assist COUNTY with establishing Project Budget

#### Design Phase Support Services

1. Cost Estimating during Design to monitor cost and control Design conformance to Project Budget
2. Master Project Design and Construction Schedule development and maintenance
3. Geotechnical review if applicable
4. Constructability Reviews
5. Quality/Value Management including options analyses and market study.
6. Subcontractor/Vendor selection process
7. Identification of long lead purchase items and establish Direct Purchasing Plan
8. Management of permitting process

#### Construction Phase Services

1. Project Management and Administration
2. Supervision of Construction Operations and Subcontractors
3. Procurement of Materials, Equipment and subcontracts through the competitive bid process
4. Perform and administer grant funded Project reports as required
5. Cost Control – comprehensive cost monitoring and reporting
6. Master Project detailed Construction Schedule development and maintenance
7. Development and maintenance of Comprehensive Safety Program
8. Project Reporting- Monthly Comprehensive Project Report on status of each Project under construction addressing progress, cost status, schedule status, and other pertinent Project information
9. Project Cost Accounting
10. Quality Control – Regular inspections and observations of the Work to assure conformance to documents and quality standards
11. Project Engineering/Document Control – Management of submittal process, RFI's, Change Orders, and technical information for Project records
12. Manage Direct Purchasing Program for tax exempt purchasing
13. Coordinate Code Compliance Inspections
14. Conduct regular Project Team Meetings to address Project status and issues and produce comprehensive meeting minutes and documentation for Project records
15. As-built documentation for Project records including drawings and operations/maintenance manuals and product data

Post Construction Phase Services

1. Project close out and cost reconciliation
2. Warranty Management
3. COUNTY Training/Operations and Maintenance
4. Facilitate transition/move in

Performance of Work by CONSTRUCTION MANAGER

Under certain special circumstances, CONSTRUCTION MANAGER shall perform work with its own forces when directed by and at the sole discretion of COUNTY.

This will generally apply to small miscellaneous Projects where it is difficult to define a specific scope of work to obtain bids, or in the event that Subcontractor bids for a particular scope are insufficient or non-responsive in terms of qualifications, scope, or schedule compliance, or if bids received are over the budget for the specific work package. Additionally, in the event of an emergency or schedule critical task, COUNTY may direct CONSTRUCTION MANAGER to perform specific work with its own forces.

**EXHIBIT B**

**Fee Schedule**

Program and Design Phase

Proposal for fees for the Program and Design Phase services for each Project (if services are requested) will be submitted for approval as a lump sum proposal for each Project assignment based on the extent of services required. The lump sum amount will include all costs associated with the services to be provided.

Construction Management

For indirect overhead, profit and general operating expenses outside of Project specific general conditions cost, for services provided during and related to the construction phase the following fee schedule is proposed:

<b><u>PROJECT VALUE</u></b> <b><u>(COUNTY'S PROJECT CONSTRUCTION BUDGET)</u></b>	<b><u>FEE</u></b>
Project value up to \$1,000,000	8% of total Project value
Project value from \$1,000,001 to \$2,000,000	7% of total Project value
Project value from \$2,000,001 to \$3,000,000	6.5% of total Project value
Project value from \$3,000,001 to 4,000,000	6% of total Project value

The Project value (COUNTY's Project Construction Budget) is the amount identified with each Task Order and includes Direct Purchase items managed by CONSTRUCTION MANAGER.

General Conditions cost will be estimated with each Project assignment and submitted with each Proposal for approval. COUNTY maintains the right to negotiate these costs.

**EXHIBIT C**

**Requests for Final Payment**

ITEMS TO BE SUBMITTED WITH GENERAL CONSTRUCTION MANAGER'S REQUEST FOR FINAL PAYMENT:

- \_\_\_ 1. Pay Request (4-Electronic copies with original signatures and original seals, noted as Final sent to Facilities Management Project Manager, Fiscal Manager, and other designee identified at the start of Project)
- \_\_\_ 2. Final Schedule of Contract Values
- \_\_\_ 3. Consent of Surety to make final Payment (signed and sealed)
- \_\_\_ 4. Power of Attorney from Surety for Release of Final Payment (signed and sealed and dated same as Consent of Surety)
- \_\_\_ 5. CONSTRUCTION MANAGER's Guarantee of Construction for one year from the date of substantial completion
- \_\_\_ 6. Fully executed Roof Warranty (if applicable) in the name of the Marion County
- \_\_\_ 7. Other special warranties as required by specifications, in the name of the Marion County
- \_\_\_ 8. All final release of liens and final Project accounting (including any contingency or other credits) to be returned to Marion County

Phil's work  
(191-000)

COPY

BCC opp  
4/6/21