

AGREEMENT BETWEEN COUNTY AND CONTRACTOR

This Agreement Between County and Contractor, (this "Agreement") made and entered into by and between Marion County, a political subdivision of the State of Florida, located at 601 SE 25th Ave, Ocala, FL 34471 (hereinafter referred to as "COUNTY") and **D&G Solutions Group LLC**, located at 200 SW 52ND AVENUE OCALA, FL 34474, possessing FEIN# 61-1789875 (hereinafter referred to as "CONTRACTOR") under seal for the Yard Waste Processing and Disposal, (hereinafter referred to as the "Project"), and COUNTY and CONTRACTOR hereby agreeing as follows:

WITNESSETH:

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

Section 1 – The Contract. The contract between COUNTY and CONTRACTOR, of which this Agreement is part, consists of the Contract Documents. This Agreement approved by the Board of County Commissioners on March 19, 2019 shall be effective on the last signature date set forth below.

Section 2 – The Contract Documents. The Contract Documents are defined as this Agreement, the Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the Parties hereafter, together with the following (if any):

Marion County Bid #19B-111 - Yard Waste Processing and Disposal, the Offer, Project Bid Scope and/or Specifications, Addenda 1, 2 as issued in support of this Bid, Exhibit A (Construction Standards), Recorded Performance Bond as required, and Certificate of Insurance.

Section 3 – 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.

Section 4 – Term. The Work (defined herein) shall commence upon approval and execution of the Agreement by the Board, effective for material collected as of March 1, 2019 through April 30, 2020 (the "Term"). An additional four (4) renewal options are available, pending mutual agreement and Board approval. **TIME IS OF THE ESSENCE.** All limitations of time set forth in the Contract Documents are of the essence of this Contract. Pursuant to F.S. 486.129 (1)(J); the Work may be presumed abandoned after ninety (90) days if CONTRACTOR terminates the Work 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. Contractor shall be required to renew, amend, or otherwise keep active the Performance Bond for as long as this Agreement is in place, and unless otherwise indicated in writing, for the estimated annual total contract value of \$450,000.

Section 5 – Scope of Services. CONTRACTOR shall complete the scope of services for 19B-111 Yard Waste Processing and Disposal, per the Contract Documents, Exhibit A "Construction Standards" herein, and within the Term.

Section 6 - Compensation. COUNTY shall make payment identified below, (the "Agreement Price"), to CONTRACTOR under COUNTY's established procedure in the Bid. There shall be no provisions for pricing adjustments during the Term. Pending mutual agreement, and with sufficient justification, an annual increase not to exceed three percent (3%) may be requested with the renewal, no later than 60 days prior to the anniversary date. CONTRACTOR shall be paid Performance Bond cost each year of the Agreement upon proof of purchase and recording of Bond with the Marion County Clerk of Court. No work may begin until the Bond is in place and on file with Procurement Services.

**PROCESSING (GRINDING/MULCHING) - \$13.75/Ton
HAULING - \$2.50/Ton**

Section 7 – 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.

Section 8 – Assignment. CONTRACTOR may not subcontract all or any part of this Agreement without written approval by COUNTY.

Section 9 – Laws, Permits, and Regulations. Prior to the performance of any Work hereunder, CONTRACTOR shall obtain and pay for all licenses and permits, as required to perform the Work. CONTRACTOR shall at all times comply with all appropriate laws, regulations, and ordinances applicable to the services provided under this Agreement.

Section 10 – Amendments. This Agreement may only be amended by mutual written agreement of both Parties.

Section 11 – Books and Records. CONTRACTOR shall keep records of all transactions, including documentation accurately reflecting the time expended by CONTRACTOR and its personnel. COUNTY shall have a right to request records from CONTRACTOR, and for those records to be made available within a reasonable timeframe depending on method of acquisition.

Section 12 – Public Records Compliance

A. IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:

Public Relations | 601 SE 25th Ave, Ocala, FL 34471

Phone: 352-438-2300 | Fax: 352-438-2309

Email: publicrelations@marioncountyfl.org

B. CONTRACTOR shall comply with public records laws, specifically:

- Keep and maintain public records required by COUNTY to perform the Work;
- Upon request from COUNTY's custodian of public 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;
- 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 the Term and following completion of this Agreement if CONTRACTOR does not transfer the records to COUNTY; and,
- Upon completion of this Agreement, transfer, at no cost, to COUNTY, all public records in possession of CONTRACTOR or keep and maintain public records required by COUNTY to perform the Work. If CONTRACTOR transfers all public records to COUNTY upon completion of this Agreement, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon the completion of this Agreement, CONTRACTOR 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.

C. If CONTRACTOR fails to provide the public records to COUNTY within a reasonable time, CONTRACTOR may be subject to penalties under Section 119.10 Florida Statutes and may be subject to unilateral cancellation of this Agreement by COUNTY.

Section 13 – Indemnification. CONTRACTOR shall indemnify and hold harmless COUNTY, its officers, employees and agents from all suits, claims, or actions of every name and description brought against COUNTY based on personal injury, bodily injury (including death) or property damages received or claimed to be received or sustained by any person or persons arising from or in connection with any negligent act or omission of CONTRACTOR or its employees, officers, or agents in performing the Work set forth herein. A bond for indemnification may be required.

Section 14 – Insurance. As applicable, during the period of the Work, insurance policies shall be with a company or companies authorized to do business in the State of Florida. COUNTY shall be notified if any policy limit has eroded to one half its annual aggregate. CONTRACTOR shall provide, within the timeframe noted in the Award Letter, a Certificate of Insurance, issued by a company authorized to do business in the State of Florida and with an A.M. Best Company rating of at least B+. All policies must show "Marion County, a political subdivision of the State of Florida" as an Additional Insured except for the workers compensation and professional liability policies. The Marion County Procurement Services Director should be shown as the Certificate Holder, and the Certificate should provide for 30-day cancellation notice to the Procurement Director's address, set forth herein, with policies for the following:

Business Auto Liability with combined single limits of not less than \$1,000,000 per occurrence and is to include bodily injury and property damage liability arising out of operation, maintenance or use of any auto, including owned, hired and non-owned automobiles.

Worker's Compensation with statutory limits and employers liability limits of at least \$1,000,000 each accident and \$1,000,000 each employee and \$1,000,000 policy limit for disease.

General Liability with limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. The policy must be maintained by CONTRACTOR for the duration of the Project. If the policy is written on a claims-made basis, CONTRACTOR must maintain the policy a minimum of 5 years following completion of the Project. "Marion County, a political subdivision of the State of Florida" must be shown as Additional Insured.

Section 15 – Independent Contractor. 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.

Section 16 – Default/Termination. In the event CONTRACTOR fails to comply with any of the provisions of this Agreement, COUNTY may terminate this Agreement for cause by first notifying CONTRACTOR in writing, specifying the nature of the default and providing CONTRACTOR with a reasonable period of time in which to rectify such default. In the event the default is not cured within the time period given, COUNTY thereafter may terminate this Agreement for cause upon written notice to CONTRACTOR without prejudice to COUNTY. In the event of termination of this Agreement for cause, COUNTY will then be responsible to compensate CONTRACTOR only for those services timely and satisfactorily performed pursuant to this Agreement up to the date of termination. COUNTY may terminate this Agreement without cause providing at least thirty (30) days written notice to CONTRACTOR. In the event of termination of this Agreement without cause, COUNTY will compensate CONTRACTOR for all services timely and satisfactorily performed pursuant to this Agreement up to and including the date of termination. Notwithstanding any other provision of this Agreement, this Agreement may be terminated if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining COUNTY's or other public entity's obligations under this Agreement. Should this occur, COUNTY shall have no further obligation to CONTRACTOR other than to pay for services rendered prior to termination.

Section 17 – Damage to Property. CONTRACTOR 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 prior to final inspection and acceptance, CONTRACTOR shall replace the same without additional cost to COUNTY, as applicable.

Section 18 – Governing Law. Law, Venue, Waiver of Jury Trial, and Attorney's Fees. This Agreement and all the Contract Documents shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. In the event of any legal proceeding arising from or related to this Agreement; (1) venue for state or federal legal proceedings shall be in

Marion County, Florida (2) for civil proceedings, the parties consent to trial by the court and waive right to jury trial, (3) the prevailing party shall be entitled to recover all of its costs, including attorney's fees.

Section 19 – Termination for Loss of Funding/Cancellation for Unappropriated Funds. The obligation of COUNTY for payment to a CONTRACTOR is limited to the availability of funds appropriated in a current fiscal period, and continuation of this Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

Section 20 – Employee Eligibility Verification. For those projects funded with State or Federal dollars, COUNTY will adhere to the practices set forth under the e-verification system, which is outlined in the clauses below. Information provided by CONTRACTOR is subject to review for the most current version of the State or Federal policies at the time of the award of this Agreement. By previously signing the ITB Acknowledgment and Addenda Certification Form and this Agreement, CONTRACTOR has agreed to perform in accordance with these requirements and agrees:

1. To enroll and participate in the federal E-Verify Program for Employment Verification under the terms provided in the "Memorandum of Understanding" governing the program.
2. To provide to COUNTY, within thirty (30) days of the effective date of this Agreement, documentation of such enrollment in the form of a copy of the E-Verify "Edit Company Profile" screen, which contains proof of enrollment in the E-Verify Program (this page can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).
3. To require each subcontractor that performs services under this Agreement to enroll and participate in the E-Verify Program within ninety (90) days of the effective date of this Agreement or within ninety (90) days of the effective date of the contract between CONTRACTOR and the subcontractor, whichever is later. CONTRACTOR shall obtain from the subcontractor(s) a copy of the "Edit Company Profile" screen indicating enrollment in the E-Verify Program and make such record(s) available to COUNTY upon request.
4. To maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to COUNTY or other authorized state entity consistent with the terms of the Memorandum of Understanding.
5. 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.

Section 21 – Force Majeure. Neither CONTRACTOR 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.

Section 22 – 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.

Section 23 - Scrutinized Companies. Scrutinized Companies Lists: If the Agreement exceeds \$1,000,000.00 in total, not including renewal years, the Contractor certifies they are not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the

Scrutinized Companies that Boycott Israel List created pursuant to Sections 215.473, F.S. and 215.4725, F.S. Pursuant to Sections 287.135(5), F.S. , and 287.135(3), F.S., the Contractor agrees County may immediately terminate the Agreement for cause if the Contractor is found to have submitted a false certification, or if the Contractor is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel during the term of this Agreement.

Section 24 – CONTRACTOR Conduct: These Guidelines govern CONTRACTOR while doing work on COUNTY property, as well as its employees, agents, consultants, and others on COUNTY property in connection with CONTRACTOR's work or at CONTRACTOR's express or implied invitation.

- **Courtesy and Respect:** COUNTY is a diverse government institution and it is critical that CONTRACTOR and its employees conduct themselves in a manner that is lawful, courteous, businesslike, and respectful of all staff, guests, or visitors.
- **Language and Behavior:** CONTRACTOR 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.
- **No Weapons, Alcohol, or Drugs:** The use, possession, distribution, or sale of any weapon, alcohol, illegal drug, or controlled dangerous substance by CONTRACTOR or its employees is prohibited. Offenders will be removed from COUNTY property and/or reported to law enforcement.
- **Smoking:** CONTRACTOR and its employees are not permitted to smoke in or near any COUNTY buildings.
- **Fraternization:** CONTRACTOR and its employees may not fraternize or socialize with COUNTY staff.
- **Appearance:** CONTRACTOR 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.
- **Reporting:** CONTRACTOR 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.

CONTRACTOR is responsible for its employees, agents, consultants and guests. If prohibited conduct does occur, CONTRACTOR 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 CONTRACTOR's contracts with COUNTY.

Section 25 – Authority to Obligate. Each person signing this Agreement on behalf of either Party individually warrants that he or she has full legal power to execute this Agreement on behalf of the Party for whom he or she is signing, and bind and obligate such Party with respect to all provisions contained in this Agreement.

Section 26 – Law, Venue, Waiver of Jury Trial, Attorney's Fees. This Agreement and all the Contract Documents shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. In the event of any legal proceeding arising from or related to this Agreement; (1) venue for state or federal legal proceedings shall be in Marion County, Florida, (2) for civil proceedings, the parties consent to trial by the court and waive right to jury trial, (3) the prevailing party shall be entitled to recover all of its costs, including attorney fees.

Section 27 – Notices. Except as otherwise provided herein, all notices and other communications provided for hereunder shall be in writing and sent by certified mail return receipt requested, or by hand delivery, and shall be deemed effective if mailed, when deposited in a United States Postal Service mailbox with postage prepaid or if hand delivered, when personally handed to the Party to whom the notice or other communication is addressed, with signed proof of delivery. COUNTY'S and CONTRACTOR'S representatives for notice purposes are:

CONTRACTOR: D&G Solutions Group LLC
5451 SE Maricamp Rd, Ocala, FL 34480
CONTACT PERSON: Chad E Ditty | 352-266-4401

COUNTY: Marion County Solid Waste
c/o Marion County, a political subdivision of the State of Florida
601 SE 25th Ave, Ocala, FL 34471

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

Procurement Services Director
Marion County Procurement Services Department
2631 SE 3rd St., Ocala, FL 34471

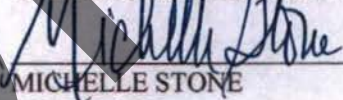
Alternatively, the parties may elect to receive said notices by e-mail. COUNTY hereby elects to receive all notices solely by email and designates its email address as procurement@marioncountyfl.org. If CONTRACTOR agrees to accept all notices solely by e-mail and acknowledges and accepts the inherent risks that come with accepting notices solely by e-mail, CONTRACTOR may designate up to two (2) e-mail addresses: cditty@dgsolutions.com and R.Figueroa@ESTIMATE.ORG. Designation of up to two (2) e-mail addresses as well as CONTRACTOR's acceptance marked below signify CONTRACTOR's election to accept notices solely by e-mail. If handwriting its e-mail address CONTRACTOR assumes the risk the e-mail address is legible. COUNTY need only make its best guess at illegible handwritten e-mail address. The election to accept notices solely by e-mail is not binding unless BOTH of the following are found: (A) at least one (1) e-mail address is provided and (B) CONTRACTOR's acceptance below is evident.

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:


3/19/19
DAVID R. ELLSPERMANN, DATE
CLERK OF COURT

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



3/19/19
MICHELLE STONE DATE
CHAIRMAN

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY



4-23-19
MATTHEW G. MINTER, DATE
MARION COUNTY ATTORNEY

BCC APPROVED: March 19, 2019
19B-111 | Yard Waste Processing and Disposal


WITNESS:


SIGNATURE
RAYMOND D FIGUEROA
PRINTED NAME

D&G SOLUTIONS GROUP LLC


4/01/19
BY: CHAD E. DITTY DATE
PRINTED: CHAD E. DITTY
ITS: (TITLE) MEMBER

WITNESS:


SIGNATURE
DONALD EMRICK
PRINTED NAME

EMAIL NOTICES ACCEPT ☒ DECLINE ☐

By initialing an option above, agent elects to accept or decline all notices by County solely via email.

**CONSTRUCTION STANDARDS
EXHIBIT A**

ARTICLE I - THE WORK

- 1.1** CONTRACTOR shall perform all Work required, implied or reasonably inferable from, this Agreement.
- 1.2** The term "Work" shall generally mean whatever is done by or required of CONTRACTOR to perform and complete its duties under this Agreement, including the following: construction of the whole or a designated part of the Project; acquiring, recording, and furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of CONTRACTOR, fuel, heat, light, cooling and all other utilities as required by this Agreement. Work to be performed by CONTRACTOR is generally described as being according to the plans and specifications furnished by COUNTY.

ARTICLE II - PAYMENT OF THE AGREEMENT PRICE

- 2.1** **PAYMENT PROCEDURE** - Identified in Bid Document
- 2.2** **WITHHELD PAYMENT**
- 2.2.1** COUNTY may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to CONTRACTOR, to protect COUNTY from loss because of:
- (a.) defective Work not remedied by CONTRACTOR nor, in the opinion of COUNTY, likely to be remedied by CONTRACTOR;
 - (b.) claims of third parties against COUNTY or COUNTY's property or reasonable evidence indicating probable filing of such claims;
 - (c.) failure by CONTRACTOR to pay Subcontractors or others in a prompt and proper fashion;
 - (d.) evidence that the Work cannot be completed in accordance with this Agreement for the unpaid balance of the Agreement Price;
 - (e.) evidence that the Work will not be completed in the time required for Substantial Completion or final completion;
 - (f.) persistent failure to carry out the Work in accordance with the Contract Documents; or
 - (g.) damage to COUNTY or a third party to whom COUNTY is, or may be, liable.
- 2.2.2** In the event that COUNTY makes written demand upon CONTRACTOR for amounts previously paid by COUNTY, CONTRACTOR shall promptly comply with such demand.
- 2.2.2** **SECTION REMOVED**

ARTICLE III - COUNTY

- 3.1.2** **SECTION REMOVED**
- 3.2** **RIGHT TO STOP WORK**
- 3.2.1** If CONTRACTOR persistently fails or refuses to perform the Work in accordance with the Contract Documents, COUNTY may order CONTRACTOR to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or COUNTY orders that Work be resumed. In such event, CONTRACTOR shall immediately obey such order.
- 3.3** **COUNTY'S RIGHT TO PERFORM WORK**

- 3.3.1 If CONTRACTOR's Work is stopped by COUNTY and CONTRACTOR fails within seven (7) days of such stoppage to provide adequate assurance to COUNTY that the cause of such stoppage will be eliminated or corrected, then COUNTY may, without prejudice to any other rights or remedies COUNTY may have against CONTRACTOR, proceed to carry out the subject Work. In such a situation, an appropriate Change Order, defined herein, shall be issued deducting from the Agreement Price the cost of correcting the subject deficiencies, plus compensation for the Architect's and/or Engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Agreement Price is insufficient to cover the amount due COUNTY, CONTRACTOR shall pay the difference to COUNTY.

ARTICLE IV - CONTRACTOR

- 4.1 CONTRACTOR shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If CONTRACTOR performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect and/or Engineer, CONTRACTOR shall bear the responsibility for such performance and shall bear the cost of correction.
- 4.2 CONTRACTOR shall perform the Work strictly in accordance with the Contract Documents.
- 4.3 CONTRACTOR shall supervise and direct the Work using CONTRACTOR's best skill, effort and attention. CONTRACTOR shall be responsible to COUNTY for any and all acts or omissions of CONTRACTOR, its employees and others engaged in the Work on behalf of CONTRACTOR.
- 4.4 **WARRANTY**
- 4.4.1 CONTRACTOR warrants to COUNTY that all labor furnished to progress the Work under this Agreement will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Agreement, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Agreement. All Work not conforming to these requirements may be considered defective. When not specifically identified in the bid documents, the warranty shall commence upon release of final retainage.
- 4.5 CONTRACTOR shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. CONTRACTOR shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

ARTICLE V - CONTRACT ADMINISTRATION

5.1 SECTION REMOVED

5.1 CLAIMS BY CONTRACTOR

- 5.2.1 All CONTRACTOR claims shall be initiated by written notice to COUNTY. Such written notice and claim must be furnished within seven (7) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 5.1.2 Pending final resolution of any claim of CONTRACTOR, CONTRACTOR shall diligently proceed with the Work and COUNTY shall continue to make payments to CONTRACTOR in accordance with this Agreement. The resolution of any claim shall be reflected by a Change Order executed by COUNTY, the Architect and/or Engineer and CONTRACTOR.
- 5.1.3 **Claims for Concealed and Unknown Conditions** - Should concealed and unknown conditions be encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as

inherent in work of the character provided for in the Contract Documents, be encountered, the Agreement Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to COUNTY having any liability to CONTRACTOR for concealed or unknown conditions, CONTRACTOR must give COUNTY and the Architect and/or Engineer written notice and claim as provided in this Subparagraph shall constitute a waiver by CONTRACTOR of any claim arising out of or relating to such concealed or unknown condition.

5.1.4 **Claims for Additional Cost** – If CONTRACTOR wishes to make a claim for an increase in the Agreement Price, as a condition precedent to any liability of COUNTY therefore, CONTRACTOR shall give the Architect and/or Engineer written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by CONTRACTOR before proceeding to execute any additional or changed Work. The failure by CONTRACTOR to timely give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

(a.) In connection with any claim by CONTRACTOR against COUNTY for compensation in excess of the Agreement Price, any liability of COUNTY for CONTRACTOR's cost shall be strictly limited to direct costs incurred by CONTRACTOR and shall in no event include indirect costs or consequential damages of CONTRACTOR. COUNTY shall not be liable to CONTRACTOR for claims of third parties, including Subcontractors, defined herein, unless and until liability of CONTRACTOR for claims of third parties has been established therefore in a court of competent jurisdiction.

5.1.5 **Claims for Additional Time** – If CONTRACTOR is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by COUNTY or someone acting in COUNTY's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond CONTRACTOR's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of CONTRACTOR to COUNTY and the Architect and/or Engineer, for such reasonable time as the Architect and/or Engineer may determine. Any notice and claim for an extension of time by CONTRACTOR shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail CONTRACTOR's basis for requiring additional time in which to complete the Project. In the event the delay to CONTRACTOR is a continuing one, only one notice and claim for additional time shall be necessary. If CONTRACTOR fails to make such claim as required in this subparagraph, any claim for extension of time shall be waived.

5.2 **FIELD ORDERS**

5.3.1 In the field, the Architect and/or Engineer shall have authority to order minor changes in the Work ("Field Orders") that do not involve a change in the Agreement Price or Term and shall not be inconsistent with the intent of this Agreement. Such Field Orders shall be binding upon CONTRACTOR and CONTRACTOR shall carry out such Field Orders promptly.

ARTICLE VI – SUBCONTRACTORS

6.1 **DEFINITION**

6.1.1 A Subcontractor is an entity which has a direct Agreement with CONTRACTOR to perform a portion of the Work.

6.2 **AWARD OF SUBCONTRACTORS**

6.2.1 Upon execution of this Agreement, CONTRACTOR shall furnish COUNTY, in writing, the names of persons or entities proposed by CONTRACTOR to act as a Subcontractor on the Project. COUNTY shall promptly reply to CONTRACTOR, in writing, stating any objections COUNTY may have to such proposed Subcontractor. CONTRACTOR shall not be required to Subcontract with any party to whom COUNTY has objections.

- 6.2.2 All subcontracts shall afford CONTRACTOR rights against the Subcontractor which correspond to those rights afforded to COUNTY against CONTRACTOR herein.

ARTICLE VII - CHANGES IN THE WORK

7.1 CHANGES PERMITTED

- 7.1.1 Changes in the Work within the general scope of this Agreement, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Agreement, by Change Order or by Field Order.

7.2 WORK ORDER/NOTICE OF CHANGE ("CHANGE ORDER") DEFINED

- 7.2.1 Change Orders shall mean a written order to CONTRACTOR executed by COUNTY and the Architect and/or Engineer, issued after execution of this Agreement, authorizing and directing a change in the Work or an adjustment in the Agreement Price or the Term, or any combination thereof. The Agreement Price and the Term may be changed only by the Change Order.

7.3 CHANGES IN THE CONTRACT PRICE

- 7.3.1 Any changes in the Agreement Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between COUNTY and CONTRACTOR as evidenced by (1) the change in the Agreement Price being set forth in the Change Order, (2) such change in the Agreement Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) CONTRACTOR's execution of the Change Order, or (b) if no mutual agreement occurs between COUNTY and CONTRACTOR, then, as provided in Subparagraph 7.3.2 below.
- 7.3.2 If no mutual agreement occurs between COUNTY and CONTRACTOR as contemplated in Subparagraph 7.3.1 above, the change in the Agreement Price, if any, shall then be determined by the Architect and/or Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Agreement Price, a reasonable allowance for direct job site overhead and profit. In such case, CONTRACTOR shall present, in such form and with such content as COUNTY or the Architect and/or Engineer requires, an itemized accounting of such expenditures or savings plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery, costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from CONTRACTOR or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with CONTRACTOR's home office or other non-job site overhead expense be included in any change in the Agreement Price. Pending final determination of reasonable expenditures or savings to COUNTY, payments on account shall be made to CONTRACTOR on the Architect and/or Engineer's Certificate for Payment.
- 7.3.3 If unit prices are provided in this Agreement, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of changed Work proposed will cause substantial inequity to COUNTY or to CONTRACTOR, the applicable unit prices shall be equitably adjusted.

7.4 EFFECT OF EXECUTED CHANGE ORDER

- 7.4.1 The execution of a Change Order by CONTRACTOR shall constitute conclusive evidence of CONTRACTOR's agreement to this Agreement as thus amended, the Agreement Price, Term and the changes in the Work. CONTRACTOR, by executing the Change Order, waives any forever releases any claim against

COUNTY for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

7.5 NOTICE OF SURETY; CONSENT

- 7.5.1 CONTRACTOR shall notify and obtain the consent and approval of CONTRACTOR's surety with reference to all change orders if such notice, consent or approvals are required by CONTRACTOR's surety or by law. CONTRACTOR's execution of the change order shall constitute CONTRACTOR's warranty to COUNTY that the surety has been notified of and consents to have expressly consented thereto.

ARTICLE VIII - UNCOVERING AND CORRECTING WORK

8.1 UNCOVERING WORK

- 8.1 If any of the Work is covered contrary to the Architect's and/or Engineer's request or to any provisions of this Agreement, it shall, if required by the Architect and/or Engineer or COUNTY, be uncovered for the Architect and/or Engineer's inspection and shall be properly replaced at CONTRACTOR's expense without change in the Term.
- 8.1.2 CONTRACTOR shall immediately proceed to correct Work rejected by the Architect and/or Engineer as defective or failing to conform to this Agreement. CONTRACTOR shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to COUNTY for the Architect's and/or Engineer's services and expenses made necessary thereby.
- 8.1.3 If within one (1) year after release of the final retainage any of the Work is found to be defective or not in accordance with this Agreement, CONTRACTOR shall correct it promptly upon receipt of written notice from COUNTY. This obligation shall survive final payment by COUNTY and termination of this Agreement. With respect to Work first performed and completed after Substantial Completion, this one-year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.
- 8.1.4 Nothing contained in this Paragraph shall establish any period of limitation with respect to other obligations which CONTRACTOR has under this Agreement. Establishment of the one year time period in this Paragraph relates only to the duty of CONTRACTOR to specifically correct the Work.