

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 **GWP Construction Inc.**, whose mailing address is 4269 NW 44th Avenue, Suite A, Ocala, FL 34482, possessing FEIN# 59-3443055 (hereinafter referred to as "CONTRACTOR") under seal for the Pre-Qualified Underground Contractors, (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 September 15, 2020 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 Solicitation #20Q-173 - Pre-Qualified Underground Contractors, the Offer, Project Bid Scope and/or Specifications, any/all Addenda as issued in support of this RFQ, and Certificate of Insurance.

Section 3 – Entire Agreement. The Contract Documents form the agreement between Parties for the Project and 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. This Agreement shall commence upon Board approval and shall be valid for a term of five (5) years, through September 30, 2025; there are no renewal options to this Agreement.

Section 5 – Scope of Services. As per specifications and requirements of project 20Q-173, CONTRACTOR shall perform underground utility and related work to complete the scope of services advertised under each Task Order (the "Work"); those exceeding the Board's threshold will be separately reviewed by the Board for approval. Task Orders shall be limited to an estimated construction budget of \$180,000; no project under this Agreement shall require bid, payment, or performance bonds unless specifically noticed in the Task Order. Task Orders will commence only upon the start date listed in the written Notice to Proceed. Emergency work may be assigned at the Utility Department's discretion per the scope of the RFQ, and shall be based upon the CONTRACTOR's expertise, or competitive proposal submittal. CONTRACTOR is required to respond to each advertisement when requested, whether by submitted offer or a written response of "no bid." If CONTRACTOR fails to respond to more than three (3) consecutive requests, CONTRACTOR shall be removed from the program, and all subsequent bidding opportunities under this Agreement. CONTRACTOR shall complete Work for individual Task Orders under 20Q-173 Pre-Qualified Underground Contractors, per the Scope of Work, Contract Documents, the Construction Standards, Exhibit A hereto, and within the Term.

Section 6 - Compensation. COUNTY shall make payment to CONTRACTOR under COUNTY's established procedure and upon completion of the work described under each Task Order, unless otherwise specified in the Task Order's terms and conditions. COUNTY may assess Liquidated Damages (LDs) for projects that are not completed in accordance with the timeline/schedule proposed in the Task Order and/or Purchase Order and/or Notice to Proceed. When LDs are not specifically identified in a Task Order or a Notice to Proceed has not been issued clarifying LDs, COUNTY reserves the right to calculate and assess LDs based on the actual loss to COUNTY. Loss may include but not be limited to the inability of Staff to move forward with planned projects due to delay of CONTRACTOR for a currently assigned project. Continual assessment of LDs for projects may be cause for recommendation for termination of contract, as timely performance is a requirement of the RFQ, as is the quality of the Work.

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 to the extent caused by any negligent act or omission of CONTRACTOR or its employees, officers, or agents in performing the Work set forth herein.

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. COUNTY need not be named as an Additional Insured, but a "subrogation waiver endorsement" is required.
- **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, 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, CONTRACTOR shall replace the same or be returned to original state 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. 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.

Beginning January 1, 2021, Section 448.095, F.S., requires CONTRACTOR to register and use the E-Verify system to verify the work authorization status of all newly hired employees and prohibits CONTRACTOR from entering into this Agreement unless it is in compliance therewith. 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 the requirements of this subsection and agrees:

- a) It is registered and uses the E-Verify system to verify work authorization status of all newly hired employees.
- a) COUNTY shall immediately terminate CONTRACTOR if COUNTY has a good faith belief that CONTRACTOR has knowingly violated Section 448.09(1), F.S., that is, that CONTRACTOR 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.
- b) If CONTRACTOR enters into a contract with a subcontractor, CONTRACTOR shall obtain from the subcontractor an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.
- c) CONTRACTOR shall maintain a copy of such affidavit for the duration of this Agreement and provide it to COUNTY upon request.
- d) CONTRACTOR shall immediately terminate the subcontractor if CONTRACTOR has a good faith belief that the subcontractor has knowingly violated Section 448.09(1), F.S., as set forth above.
- e) If COUNTY has a good faith belief that CONTRACTOR's subcontractor has knowingly violated Section 448.09(1), F.S., but that CONTRACTOR has otherwise complied, COUNTY shall promptly order CONTRACTOR to terminate the subcontractor. CONTRACTOR agrees that upon such an order, CONTRACTOR shall immediately terminate the subcontractor. CONTRACTOR agrees that if it should fail to comply with such an order, COUNTY shall immediately terminate CONTRACTOR.
- f) If COUNTY terminates this Agreement with CONTRACTOR, CONTRACTOR may not be awarded a public contract for at least one (1) year after the date of termination.
- g) CONTRACTOR is liable for any additional costs incurred by COUNTY as a result of a termination under this subsection.
- h) Any such termination under this subsection is not a breach of this Agreement and may not be considered as such.
- i) CONTRACTOR 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.
- j) 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, severe floods, pandemics and epidemics.

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. The Agreement provides for Notices and all other communications to be in writing and sent by certified mail return receipt requested or by hand delivery. CONTRACTOR's and COUNTY's representatives and addresses for notice purposes are:

CONTRACTOR: GWP Construction Inc.
4269 NW 44th Avenue, Suite A, Ocala, FL 34482
CONTACT PERSON: Cheryl Pauley | 352-351-2412

COUNTY: Marion County Utilities
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: office@gwpconstruction.com and bid@gwpconstruction.com. Designation signifies CONTRACTOR's election to accept notices solely by e-mail.

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:

 9/15/2020
DAVID R. ELLSPERMANN, DATE
CLERK OF COURT

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

 10-1-2020
MATTHEW G. MINTER, DATE
MARION COUNTY ATTORNEY

WITNESS:


SIGNATURE
Kristina Redding
PRINTED NAME

WITNESS:


SIGNATURE
Scott Adkins
PRINTED NAME

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

 9/15/2020
KATHY BRYANT DATE
CHAIRMAN

BCC APPROVED:

September 15, 2020
20Q-173 | Pre-Qualified Underground Contractors

G W P CONSTRUCTION, INC.


DATE
Garrett Stewart
PRINTED:
Vice President
ITS: (TITLE)

EXHIBIT A CONSTRUCTION STANDARDS

SECTION 1 THE WORK

A. PERFORM ALL WORK.

CONTRACTOR shall perform all Work required, implied or reasonably inferable from, this Agreement.

B. "WORK" DEFINED.

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.

SECTION 2 RETAINAGE

A. STATUTE GOVERNS.

Retainage amounts for construction services shall be in accordance with §218.735, F.S.

B. AMOUNT REQUIRED.

For contracts in excess of Two Hundred Thousand Dollars (\$200,000), COUNTY may retain from each progress payment made to CONTRACTOR an amount not exceeding five (5%) percent of the payment as retainage.

C. DOES NOT APPLY IN LIMITED CIRCUMSTANCES.

This 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 requirements that are contrary to any provision of the Local Government Prompt Payment Act, Sections 218.70-218.80, F.S.

D. WITHHELD UNTIL FINAL COMPLETION.

Retainage shall be withheld until the Project has reached final completion and is accepted by COUNTY. Final completion is defined as having all Work completed, all punch list items corrected, and final inspection completed and accepted by COUNTY. Upon final completion, CONTRACTOR shall submit the final payment application requesting release of retainage along with Waivers of Right to Claim Against the Payment Bond (Final Payment) from all subcontractors, as defined in F.S. 713.01, who performed Work on the Project. Retainage shall not be fully released until all Waivers of Right to Claim Against the Payment Bond (Final Payment) have been submitted to COUNTY.

SECTION 3 PAYMENT OF THE AGREEMENT PRICE

A. PROGRESS PAYMENTS.

COUNTY shall pay the Agreement Price by making progress payments to CONTRACTOR as provided below.

B. PAYMENT PROCEDURE.

PROGRESS PAYMENTS – Based upon CONTRACTOR's Application for Payment submitted to the Architect and/or Engineer and upon Certificates for Payment subsequently issued to COUNTY by the Architect and/or Engineer, COUNTY shall make progress payments to CONTRACTOR on account of the Agreement Price.

C. APPLICATION FOR PAYMENT.

On or before the 25th day of each month after commencement of the Work, CONTRACTOR shall submit an Application for Payment for the period ending the last working day of the month to the Architect and/or Engineer in such form and manner, and with such supporting data and content, as COUNTY or the Architect and/or Engineer may require. Therein, CONTRACTOR may request payment for that portion of the Agreement Price properly allocable to Agreement requirements properly provided, labor, materials and equipment properly incorporated in the Work plus that portion of the Agreement Price properly allocable to materials or equipment properly stored on-site (or elsewhere if approved in advance in writing by COUNTY) for subsequent incorporation in the Work, less the total amount of previous payments received from COUNTY.

1) CONTRACTOR'S REPRESENTATION.

Payment for stored materials and equipment shall be conditioned upon CONTRACTOR's proof satisfactory to COUNTY, that COUNTY has title to such materials and equipment and shall include proof of required insurance. Such Application for Payment shall be signed by CONTRACTOR and shall constitute CONTRACTOR's representation that the Work has progressed to the level for which payment is requested in accordance with this Agreement, that the Work has been properly installed or performed in full accordance with this Agreement, and that CONTRACTOR knows of no reason why payment should not be made as requested, thereafter, the Architect and/or Engineer will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Agreement.

2) PAYMENT.

COUNTY shall make progress payments on account of the Agreement Price to CONTRACTOR in accordance with The Local Government Prompt Payment Act, §§218.70-218.80, F.S. following the Architect's and/or Engineer's receipt of each Application for Payment. The amount of each progress payment shall be the amount certified for payment by the Architect and/or Engineer less such amounts, if any, otherwise owing by CONTRACTOR to COUNTY or which COUNTY shall have the right to withhold as authorized by this Agreement. The Architect's and/or Engineer's certification of CONTRACTOR's Application for Payment shall not preclude COUNTY from the exercise of any of its rights as set forth in this Agreement.

D. WARRANTS TITLE.

CONTRACTOR warrants that title to all Work covered by an Application for Payment will pass to COUNTY no later than the time of payment. CONTRACTOR further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from COUNTY shall be free and clear of liens, claims, security interest or other encumbrances in favor of CONTRACTOR or any other person or entity whatsoever.

E. PAY SUBCONTRACTOR.

CONTRACTOR shall promptly pay each subcontractor on account of such subcontractor's work, the amount to which such subcontractor is entitled. In the event COUNTY becomes informed that CONTRACTOR has not paid a subcontractor as herein provided, COUNTY shall have the right, but not the duty, to issue future checks in payment to CONTRACTOR of amounts otherwise due hereunder naming CONTRACTOR and such subcontractor as joint payees. Such joint check procedure, if employed by COUNTY, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit COUNTY to repeat the procedure in the future.

F. NOT ACCEPTANCE OF WORK.

No progress payment, nor any use or occupancy of the Project by COUNTY, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Agreement.

G. WITHHELD PAYMENT.

- 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) In the event that COUNTY makes written demand upon CONTRACTOR for amounts previously paid by COUNTY, CONTRACTOR shall promptly comply with such demand.

H. UNEXCUSED FAILURE TO PAY.

If within ten (10) days after the date established herein for COUNTY's payment to CONTRACTOR, without cause or basis hereunder, fails to pay CONTRACTOR any amount then due and payable to CONTRACTOR, then CONTRACTOR may after seven (7) additional days written notice to COUNTY and the Architect and/or Engineer, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from COUNTY have been received. Any payment not made within ten (10) days after the date due shall bear interest at the rate of one and a half percent (1.5%) per annum.

**SECTION 4
COUNTY**

A. WRITTEN AND TANGIBLE MATERIAL.

COUNTY shall furnish to CONTRACTOR, at the time of executing this Agreement, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to CONTRACTOR only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, COUNTY does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. COUNTY shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

B. APPROVALS; EASEMENTS.

Excluding permits and fees normally the responsibility of CONTRACTOR, COUNTY shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

C. COPIES OF CONTRACT DOCUMENTS.

COUNTY shall furnish CONTRACTOR, free of charge, four (4) copies of the Contract Documents for execution of the Work. CONTRACTOR will be charged, and shall pay COUNTY, all actual costs for each additional set of the Contract Documents which it may require.

D. RIGHT TO STOP WORK.

If CONTRACTOR persistently fails or refuses to perform the Work in accordance with this Agreement, 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.

E. COUNTY'S RIGHT TO PERFORM WORK.

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 promptly pay the difference to COUNTY.

F. TIME FOR CORRECTION.

Any defects or deficiencies in materials or workmanship that are deemed by the Architect and/or Engineer or the COUNTY as needing immediate correction shall be addressed within thirty (30) days of written notification. Failure to correct the deficiencies within thirty (30) days will result in the deduction of time against the overall Contract Time for completion.

**SECTION 5
CONTRACTOR**

A. CONTRACTOR DUTY.

CONTRACTOR affirms its continuing duty to 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.

B. IN ACCORDANCE WITH THIS AGREEMENT.

CONTRACTOR shall perform the Work strictly in accordance with this Agreement.

C. RESPONSIBLE FOR WORK.

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.

D. WARRANTY.

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 the date of COUNTY's issuance of final payment to CONTRACTOR and shall be for a period of one (1) year.

E. PERMITS AND FEES.

CONTRACTOR shall obtain and pay for all permits, fees and licenses necessary and/or 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.

**SECTION 6
CONTRACT ADMINISTRATION
BY ARCHITECT and/or ENGINEER ADMINISTRATION**

A. REPRESENTATIVE OF COUNTY.

The Architect and/or Engineer, unless otherwise directed by COUNTY in writing, will perform those duties and discharge those responsibilities allocated to the Architect and/or Engineer as set forth in the Contract Documents. The Architect and/or Engineer shall be COUNTY's representative from the effective date of this Agreement until a final Certificate for Payment is issued. The Architect and/or Engineer shall be authorized to act on behalf of COUNTY only to the extent provided in the Contract Documents.

B. COMMUNICATE THROUGH ARCHITECT AND/OR ENGINEER.

COUNTY and CONTRACTOR shall communicate with each other in the first instance through the Architect and/or Engineer.

C. INTERPRETER; JUDGE.

The Architect and/or Engineer shall be the initial interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by CONTRACTOR. The Architect and/or Engineer shall render written or

graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of CONTRACTOR.

D. CERTIFY PAYMENT.

The Architect and/or Engineer will review CONTRACTOR's Applications for Payment and will certify to COUNTY for payment to CONTRACTOR those amounts then due CONTRACTOR as provided in this Agreement.

E. AUTHORITY TO REJECT WORK.

The Architect and/or Engineer shall have authority to reject Work that is defective or does not conform to the requirements of the Contract Documents. If the Architect and/or Engineer deems it necessary or advisable, the Architect and/or Engineer shall have authority to require additional inspection or testing of the Work for compliance with requirements of the Contract Documents.

F. APPROVE SUBMITTALS.

The Architect and/or Engineer will review and approve, or take other appropriate action as necessary, concerning CONTRACTOR's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

G. CHANGE ORDER; FIELD ORDER.

The Architect and/or Engineer will prepare Change Orders, defined herein, and may authorize minor changes in the Work by Field Order, defined herein, as provided elsewhere herein.

H. DETERMINE BENCHMARKS.

The Architect and/or Engineer shall, upon written request from CONTRACTOR, conduct inspections to determine the date of Substantial Completion and the date of Final Completion, will receive and forward to COUNTY for COUNTY's review and records, written warranties and related documents required by the Contract Documents and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

I. FINAL AS TO AESTHETICS.

The Architect's and/or Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Agreement.

J. CLAIMS BY CONTRACTOR, NOTICE.

All CONTRACTOR claims shall be initiated by written notice to COUNTY and the Architect and/or Engineer. 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.

K. PROCEED; CHANGE ORDER.

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 under this subsection shall be reflected by a Change Order executed by COUNTY, the Architect and/or Engineer and CONTRACTOR.

L. 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 subsection, and shall constitute a waiver by CONTRACTOR of any claim arising out of or relating to such concealed or unknown condition.

M. 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.

1) **Direct Costs.**

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.

N. 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 subsection, any claim for extension of time shall be waived.

O. FIELD ORDERS.

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

SECTION 7
SUBCONTRACTORS

A. "SUBCONTRACTOR" DEFINED.

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

B. AWARD OF SUBCONTRACTORS.

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 subcontract with any Party to whom COUNTY has objections.

C. RIGHTS AGAINST SUBCONTRACTORS.

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

SECTION 8
CHANGES IN THE WORK

A. CHANGES PERMITTED.

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.

B. “CHANGE ORDER” DEFINED.

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 Change Order. Changed Work cannot be started until a fully executed Change Order is on file with COUNTY; including but not limited to Change Orders that need approval of COUNTY’s Board of County Commissioners.

C. HOW CHANGES ARE DETERMINED.

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 below.

D. ALTERNATIVELY, REASONABLE EXPENDITURES.

If no mutual agreement occurs between COUNTY and CONTRACTOR as contemplated 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 of savings to COUNTY, payments on account shall be made to CONTRACTOR on the Architect and/or Engineer’s Certificate for Payment.

E. UNIT PRICES EQUITABLY ADJUSTED.

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.

F. CHANGE ORDER EFFECT.

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 and 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.

G. NOTICE; CONSENT.

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. CONTRACTOR shall provide to the COUNTY a rider to the original bond as provided by the surety.

SECTION 9
UNCOVERING AND CORRECTING WORK

A. UNCOVERING WORK.

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.

B. CORRECT WORK.

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.

C. WARRANTY.

If within one (1) year after the date of COUNTY's issuance of final payment to CONTRACTOR 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 (1) 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.

D. NO ESTABLISHMENT OF LIMITATIONS OF TIME.

Nothing contained in this Section 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 Section relates only to the duty of CONTRACTOR to specifically correct the Work.