

AGREEMENT BETWEEN COUNTY AND CONTRACTOR

This Agreement, made and entered into May 19, 2015 by and between Marion County, a political subdivision of the State of Florida, (hereinafter referred to as the "COUNTY") and **Guerra Development Corporation**, located at 2817 NE 3rd Street, Ocala, FL 34470, possessing FEIN# 59-2615012 (hereinafter referred to as the "CONTRACTOR") under seal for the Civil/Site Engineers for Miscellaneous Projects, (hereinafter referred to as the "PROJECT"), and the COUNTY and the CONTRACTOR hereby agreeing as follows:

WITNESSETH:

In consideration of the mutual covenants and promises contained herein, the COUNTY and CONTRACTOR (the "PARTIES") hereto agree as follows:

Section 1 – Term. This Agreement shall commence upon Board approval and shall be in effect through May 19, 2020, with three (3) optional one (1) year renewals; pending mutual agreement by both parties.

Section 2 – Scope of Services. As per specifications and requirements of RFQ 15Q-051, the ENGINEER shall be assigned by the COUNTY for its design projects for its roadway design, preliminary roadway design, traffic studies, and stormwater retrofits, but not limited to those outlined in the RFQ. Project task orders which exceed \$25,000 shall be subject to a separate contract (project amendment); those which exceed \$50,000 shall be additionally subject to final review and approval by the Board of County Commissioners (BCC). Smaller projects may be assigned a purchase order (PO) only, however all proposals must be submitted in writing and contain a scope of services with a breakdown of hours and rates.

Section 3 – Compensation. The COUNTY shall make payment to the ENGINEER upon completion of the services or receipt of product as described in Section 2 of this agreement. There shall be no provisions for pricing adjustments during the term of the contract. The rate classification and hourly fee schedule for the task orders/projects covered under this RFQ are identified below:

| Classification | Hourly Rate | Classification | Hourly Rate |
|-------------------------------|-------------|-------------------------------|-------------|
| Principal Engineer | \$175.00 | CADD Technician | \$74.00 |
| Project Manager (Registered) | \$145.00 | GIS Technician | \$75.00 |
| Project Manager | \$120.00 | Project Surveyor & Mapper | \$121.00 |
| Project Engineer (Registered) | \$125.00 | 2-Man Survey Field Crew | \$100.00 |
| Staff Engineer | \$95.00 | 3-Man Survey Field Crew | \$118.00 |
| Staff Geologist | \$85.00 | Principal Landscape Architect | \$120.00 |
| Hydro geologist | \$100.00 | Landscape Architect | \$95.00 |
| Staff Scientist | \$75.00 | Clerical | \$35.00 |
| CADD Designer | \$75.00 | | |

Overtime shall not be considered for any classification, reimbursables are not allowed for this contract (projects/task orders are all-inclusive), and lump-sum task orders may be subject to further negotiation.

Section 4 – 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 deliver, 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. The COUNTY'S and the CONTRACTOR'S representatives for notice purposes are:

CONTRACTOR: Guerra Development Corporation
2817 NE 3rd Street, Ocala, FL 34470
CONTACT PERSON: Juan C. Guerra
352-629-8060 | E-mail: guerracorp@att.net

COUNTY: Marion County Countywide
c/o Marion County Board of County Commissioners
601 SE 25th Ave, Ocala, FL 34471

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

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

Section 5 – Assignment. The CONTRACTOR may not subcontract all or any part of this Agreement without written approval by the COUNTY.

Section 6 – Laws, Permits, and Regulations. Prior to the performance of any work hereunder, the CONTRACTOR shall obtain and pay for all licenses and permits, as required to perform the services described in Section 2 of this Agreement. CONTRACTOR shall at all times comply with all appropriate laws, regulations, and ordinances applicable to the services provided under this Agreement.

Section 7 – Amendments. This Agreement may only be amended by mutual written agreement of both Parties.

Section 8 – Books and Records. The CONTRACTOR shall keep records of all transactions. The COUNTY shall have a right to review such records at the CONTRACTOR'S office during normal business hours.

Section 9 – Indemnification. The CONTRACTOR shall indemnify and hold harmless the COUNTY, its officers, employees and agents from all suits, claims, or actions of every name and description brought against the 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 the CONTRACTOR or its employees, officers, or agents in performing the services set forth herein.

Section 10 – Insurance. As applicable, during the period the services are rendered, insurance policies shall be with a company or companies authorized to do business in the State of Florida. The County shall be notified if any policy limit has eroded to one half its annual aggregate. The CONTRACTOR shall provide 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 the "Marion County Board of County Commissioners" as an Additional Insured except for the workers compensation and professional liability policies. The Procurement Services Director should be shown as the Certificate Holder, and the Certificate should provide for 30-day cancellation notice to that address with policies for the following:

Business Auto Liability shall be provided by the CONTRACTOR 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 shall be purchased and maintained by the CONTRACTOR 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 the CONTRACTOR for the duration of the project. If the policy is written on a claims-made basis, the CONTRACTOR must maintain the policy a minimum of 5 years following completion of the project. The County of Marion must be shown as additional insured.

Professional Liability with limits of not less than \$1,000,000 per occurrence and \$2,000,000.00 annual aggregate. Higher limits may be required for projects valued in excess of \$5,000,000. Projects \$5,000,000 or more will need to be reviewed by Marion County Risk and Benefit Services to determine appropriate Professional Liability limits. The policy must be maintained by the CONTRACTOR for the duration of the project. If the policy is written on a claims-made basis, the CONTRACTOR must maintain the policy for a minimum of 5 years following the completion of the project.

Section 11 – Independent CONTRACTOR. In the performance of this Agreement, the CONTRACTOR will be acting in the capacity of an "independent CONTRACTOR" and not as an agent, employee, partner, joint venture, or associate of the COUNTY. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures utilized by the CONTRACTOR in the full performance of this Agreement.

Section 12 – Default/Termination. In the event the CONTRACTOR fails to comply with any of the provisions of this Agreement, the COUNTY may terminate this Agreement for cause by first notifying the CONTRACTOR in writing, specifying the nature of the default and providing the 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, the COUNTY thereafter may terminate this Agreement upon written notice to the CONTRACTOR without prejudice to the COUNTY in terms of any right or for cause; the COUNTY will be responsible for compensation to the CONTRACTOR only for the termination date. The COUNTY may terminate this Agreement without cause providing at least thirty (30) days written notice to the CONTRACTOR. In the event of termination of this Agreement without cause, the COUNTY will compensate the CONTRACTOR for all services timely and satisfactorily performed pursuant to this Agreement up to the date of termination. Notwithstanding any other provision of this Contract, this Contract may be terminated if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. County shall have no further obligation to CONTRACTOR, other than to pay for services rendered prior to termination.

Section 13 – Timely Performance. All work will commence upon authorization from the County's representative. All work will proceed in a timely manner without delays.

Section 14 – Damage to Property. The CONTRACTOR shall be responsible for all material, equipment and supplies sold and delivered to the COUNTY under this Contract and until final inspection of the work and acceptance thereof by the COUNTY. In the event any such material, equipment and supplies are lost, stolen, damaged or destroyed prior to final inspection and acceptance, the CONTRACTOR shall replace the same without additional cost to the COUNTY, as applicable.

Section 15 – Termination for Loss of Funding/Cancellation for Unappropriated Funds. The obligation of the County for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

Section 16 – Use of Other Contracts. Marion County Board of County Commissioners reserves the right to utilize any County contract, State of Florida Contract, city or county governmental agencies, school board, community college/state university system cooperative bid agreement. Marion County Board of County Commissioners reserves the right to separately bid any single order or to purchase any item on this solicitation/contract if it is in the best interest of the County.

Section 17 – Employee Eligibility Verification. For those projects funded with State or Federal dollars, Marion County will adhere to the practices set forth under the e-verification system, which is outlined in the clauses below. Information provided by the Contractor is subject to review for the most current version of the State or Federal policies at the time of contract award. By previously signing the ITB Acknowledgment and Addenda Certification Form, and this contract 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 the Agency, within thirty (30) days of the effective date of this contract, 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 work under this contract to enroll and participate in the E-Verify Program within ninety (90) days of the effective date of this contract/amendment/extension or within ninety (90) days of the effective date of the contract between the Contractor and the subcontractor, whichever is later. The 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 the Agency 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 the Agency 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 contract and the Agency may treat a failure to comply as a material breach of the contract.

Section 18 – 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 19 – Truth in Negotiation. The Engineer warrants that the wage rates and other factual unit costs supporting the compensation to the Engineer under this Agreement are accurate, complete and current at the time of contracting. In addition, the Engineer understands and agrees that the original contract price and any additions thereto will be adjusted to exclude any significant sums by which the County determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within one year following the end of the contract.

Section 20 – 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. The 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 21 – 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.

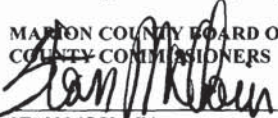
IN WITNESS WHEREOF the parties have executed this Amendment to Agreement the day and year first written above.

ATTEST:



DAVID R. ELLSPERMANN,
CLERK OF COURT

MARION COUNTY BOARD OF
COUNTY COMMISSIONERS



STAN MCCLAIN,
CHAIRMAN

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY



MATTHEW G. MINTER, DATE
MARION COUNTY ATTORNEY

WITNESS:



SIGNATURE



PRINTED NAME

GUERRA DEVELOPMENT CORPORATION:

by: 

SIGNATURE

05/21/15

DATE

Laura Guerra

PRINTED NAME

ITS: Vice President

(TITLE)

WITNESS:



SIGNATURE

Andrew Mallick

PRINTED NAME