

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 **Art Walker Construction, Inc**, located at 2889 NW 63rd Street, Ocala, FL 34475, possessing FEIN# 59-3417034 (hereinafter referred to as "CONTRACTOR") under seal for the Misc Maintenance for Roads, Right-of-Ways, and Stormwater Management Facilities, (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 August 1, 2017 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 #17Q-087 - Misc Maintenance for Roads, Right-of-Ways, and Stormwater Management Facilities, Project Bid Scope and or Specifications, Plans and Drawings, any/all Addenda as issued in support of this Bid, Recorded Bonds as required, Certificate of Insurance and Notice to Proceed.

Section 3 – Entire Agreement. The Contract Documents form the agreement between Parties for the Project. 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 COUNTY's Board of County Commissioners' approval, ending July 31, 2022 with no renewal options ("Term"). All Work, defined herein, will proceed in a timely manner without delays.

Section 5 – Scope of Services. CONTRACTOR shall complete the Work for Project 17Q-087, more fully set forth on **Exhibit A** hereto, as per the plans and specifications furnished by COUNTY and according to the timeframe as noted herein.

Section 6 – Compensation. COUNTY shall make payment to the CONTRACTOR under COUNTY's established procedure, upon completion of the work assigned, unless otherwise specified in the task order's terms and conditions.

Section 7 – 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: Art Walker Construction, Inc
2889 NW 63rd Street,
Ocala, FL 34475
CONTACT PERSON: Tarah Walker
352-629-1466 | E-mail: office@artwalkerconstruction.com

COUNTY: Marion County Office of the County Engineer
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
E-mail: procurement@marioncountyfl.org

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. COUNTY shall have a right to review such records at CONTRACTOR'S office during normal business hours.

Section 12 – Public Records Compliance

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:

Office of Public Information
601 SE 25th Ave.
Ocala, FL 34471
Phone: 352-438-2300 | Fax: 352-438-2309
Email: PIO@marioncountyfl.org

A. 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.

A. 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 – 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 19 – 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 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 – 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 24 – 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 25 – Exhibits/Attachments. The following attachments are hereby incorporated into this Agreement as part hereof as though fully set forth herein: **EXHIBIT A- Scope of Service**

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:

 AUG 16 2017
DAVID R. ELLSPERMANN, DATE
CLERK OF COURT

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

 AUG 15 2017
CARL ZALAK, III DATE
CHAIRMAN

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

 8-10-17
for MATTHEW G. MINTER, DATE
MARION COUNTY ATTORNEY

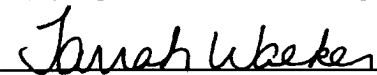
BCC APPROVED:

August 1, 2017
17Q-087 | Misc Maintenance for Roads, Right-of-Ways, and Stormwater Management Facilities

WITNESS:

 Tim Walker
SIGNATURE
Tim Walker
PRINTED NAME

ART WALKER CONSTRUCTION, INC

 8/3/17
BY: DATE
Tarrah Walker
PRINTED:
Vice President
ITS: (TITLE)

WITNESS:


 James T. Lusher
SIGNATURE
James T. Lusher
PRINTED NAME

EXHIBIT A

SCOPE OF SERVICE

TASK ORDERS

Work under this CONTRACT will be performed as a series of tasks. The Task Orders will define the scope, location, limits of the projects and schedule for each work request. The CONTRACT will provide for unit prices for certain common items and for standard labor and equipment rates to be used for other tasks.

Task Orders will generally cover single sites or similar activities within close proximity. Task orders at this time are not defined, but will be miscellaneous in scope, of varied size and complexity as required by the County. A Task Order may include multiple work activities to complete a project. Separate Task Orders shall be used for unrelated projects scattered over a large area. Task Orders which exceed \$200,000 (by Florida Statute) and shall be subject to Payment & Performance Bonding at the value of 100% of the value of the job; firms must be able to provide bonding by an agency prior to contract execution in these cases. In all cases, the Task Order will have a detailed pricing schedule, reflecting the COUNTY's total cost for the project.

Task Orders may require separate contracts as requested by the COUNTY. Task Orders at the appropriate thresholds will require necessary approval(s) by Administration or the Board of County Commissioners. The County reserves the right to require P&P bonds on any public work project, provided the contractor is notified of the intent during the solicitation process, or the County is willing to absorb the actual cost of the P&P bonds after award.

The CONTRACT will operate as follows:

- 1) The COUNTY will define specific tasks to be performed under this CONTRACT, and will provide the following information to the CONTRACTOR:
 - a) Location and description of the project - including drawings, specifications and other details as required defining the project.
 - b) Required schedule.
- 2) CONTRACTOR will provide detailed cost proposal using itemized line items for all work and materials and CONTRACTORS estimate of time required for work. If acceptable to the COUNTY, this will be used as the authorized Task Order funding. Where quantities of one or more of the work items cannot be estimated prior to performing the work, the Task Order will provide for payment of such work items based on the contract prices and the actual quantity of work performed.
- 3) Upon agreement with the CONTRACTOR's proposal, the COUNTY will authorize the work in writing through the execution of the Task Order. This task order will specify:
 - a) Project location and description.
 - b) Authorized payment.
 - c) Schedule (begin and end dates).
- 4) Following notification by the CONTRACTOR that the work is complete, the COUNTY will inspect to verify that the work has been performed in accordance with the Task Order. If acceptable, the COUNTY will authorize payment of the Task Order amount.

DESCRIPTION OF PROJECT

This project will provide maintenance and repairs to existing County-maintained roads, right-of ways, and stormwater facilities such as pipes, swales and drainage retention areas. The work shall include clearing and grubbing, tree removal, erosion repair, cleaning, repair or replacement of drainage structures, grading of drainage swales, removal and replacement of pipe end treatments, sinkhole repair, fence repair and/or replacement and stabilization.

Miscellaneous maintenance work will be ordered by an issuance of a Task Order at the time services are required. Each Task Order will specify the location or project area for which the task or work is to be completed, anticipated start date and any other details specific to the work.

QUALITY OF WORK AND MATERIAL REQUIREMENTS

All work and materials provided pursuant to this CONTRACT shall satisfy the requirements of the FDOT Standard Specifications for Road and Bridge Construction, latest edition and the FDOT Design Standards, latest edition. The Maintenance Specifications within this CONTRACT are based primarily on the FDOT specifications, but have been slightly modified to meet Marion County's requirements for maintenance projects on County-maintained roads, right of ways and stormwater facilities.

CONTRACT DOCUMENTS

Provide overview of what documents are considered as part of the CONTRACT documents. The plans, exhibits, and/or specifications are an integral part of the CONTRACT Documents and as such will not stand alone if used independently. The plans, exhibits, and/or specifications establish minimum standards of quality for this project. Initial contracts with awarded CONTRACTORS will be required outlining the general provisions of the RFQ.

CONTRACTOR'S RESPONSIBILITIES

The CONTRACTOR shall furnish all labor, equipment, maintenance of traffic, fuel and materials to perform all operations necessary to complete work in strict accordance with these specifications and subject to the terms and conditions of the CONTRACT. These specifications will provide a basis for the furnishing of all materials, equipment, labor, transportation, testing and other goods and services necessary to service County-maintained roads, right-of-ways and stormwater facilities, to the extent described in the scope of work and addendums.