

BREVARD COUNTY
PUBLIC WORKS DEPARTMENT

CONTINUING CONSTRUCTION MANAGER CONTRACT
W & J CONSTRUCTION CORPORATION

Brevard County Public Works Department

2725 Judge Fran Jamieson Way, Room A-201
Viera, Florida 32940

CONTINUING CONSTRUCTION MANAGEMENT AT RISK CONTRACT 3

- 1. RECITALS. 4
- 2. ADMINISTRATION. 4
- 3. TERM..... 4
- 4. NON-EXCLUSIVE CONTRACT..... 5
- 5. DEFINITIONS. 5
- 6. SCOPE OF SERVICES. 9
- 7. STANDARD OF CARE REQUIRED FOR SERVICES. 9
- 8. QUALITY CONTROL. 12
- 9. USE OF TASK ORDERS. 13
- 10. FORCE MAJEURE 15
- 11. COMPENSATION AND REIMBURSABLE COSTS. 16
- 12. BILLING, PAYMENT AND PARTIAL PAYMENTS 18
- 13. OWNERSHIP AND REUSE OF WORK PRODUCT. 19
- 14. FEDERAL CONTRACT PROVISIONS. 21
- 15. AUDIT RIGHTS AND PUBLIC RECORDS. 21
- 16. INDEPENDENT CONTRACTOR. 24
- 17. EQUAL OPPORTUNITY EMPLOYMENT. 24
- 18. UNAUTHORIZED ALIEN WORKERS AND EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY). 24
- 19. SUBCONTRACTING. 26
- 20. ASSIGNMENT. 26
- 21. CONFLICTS OF INTEREST. 26
- 22. COVENANT AGAINST CONTINGENT FEES. 27
- 23. PUBLIC ENTITY CRIMES. 28
- 24. SCRUTINIZED COMPANIES LIST..... 28
- 25. INDEMNIFICATION AND INSURANCE..... 29
- 26. DISPUTE RESOLUTION. 33
- 27. TERMINATION OF CONTRACT..... 34
- 28. NOTICES AND AUTHORIZED REPRESENTATIVES..... 36
- 29. ATTORNEY’S FEES, GOVERNING LAW, VENUE, AND WAIVER OF JURY TRIAL..... 37
- 30. MODIFICATIONS..... 37
- 31. ENTIRETY OF CONTRACT. 38
- 32. INTERPRETATION..... 38

33. SEVERABILITY38

34. FURTHER ASSURANCES38

35. COUNTERPARTS AND AUTHORITY39

36. NOTICE OF CLAIM; WAIVER OF REMEDIES; NO DAMAGES FOR DELAY;
DISPUTE RESOLUTION.39

37. PUBLIC CONSTRUCTION BOND42

ATTACHMENT A GENERAL CONDITIONS43

ATTACHMENT B FEDERAL CONTRACT REQUIREMENTS45

ATTACHMENT C SAMPLE MODEL RELEASE58

ATTACHMENT D PUBLIC ENTITIES CRIMES AFFIDAVIT60

ATTACHMENT E CONTRACTOR AFFIDAVIT REGARDING SCRUTINIZED
COMPANY LIST61

ATTACHMENT F DISCLOSURE FORM FOREIGN INFLUENCE ON CONTRACTS OR
GRANTS HAVING A VALUE OF \$100,000 OR MORE62

CONTINUING CONSTRUCTION MANAGEMENT AT RISK CONTRACT

THIS CONTRACT is made by and between the following Parties: **BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as COUNTY, and **W & J CONSTRUCTION CORPORATION**, a business having its principal address at 1005 Viera Blvd, Ste 202, Rockledge, FL 32955, hereinafter referred to as CONTRACTOR.

RECITALS

WHEREAS, the COUNTY issued Request for Qualifications RFQ# 6-22-05, which is incorporated herein by this reference, on June 2, 2022, for Construction Manager (At Risk) services and has selected the CONTRACTOR to perform services on a continuing consultant basis pursuant to the provisions of Sections 255.103 and 287.055, Florida Statutes, as may be amended, and Brevard County Policy BCC-26 (Acquisition of Consultant Professional Services); and

WHEREAS, various County Departments may be utilizing this Contract and each department will be responsible for administering any Task Orders it issues; and

WHEREAS, the CONTRACTOR was selected to perform Construction Manager (At-Risk) services; and

WHEREAS, Task Orders may be issued under this Contract which include the requirement for the CONTRACTOR to comply with special contract clauses required by Federal and/or State agencies, including the Federal Emergency Management Agency (FEMA) and American Rescue Plan Act (ARPA), and associated regulations, depending on whether funding for the services under a specific Task Order will come from/be reimbursed from certain sources; and

WHEREAS, compliance by the CONTRACTOR with the special contract clauses related to FEMA, ARPA, and other Federal or State regulations, when applicable, is important in order for the COUNTY to remain eligible to be reimbursed for the cost of the work and/or being required to reimburse the federal government for the cost of the work; and

WHEREAS, the CONTRACTOR accepts the relationship of trust and confidence established by this Contract, covenants to cooperate with the Architect/Engineer in furthering the interests of the COUNTY, agrees to furnish efficient business administration and superintendence, and shall use best efforts to complete the Project in the best and soundest way, and in the most expeditious and economical manner consistent with the interests of the COUNTY.

NOW THEREFORE, in consideration of the mutual promises hereinafter contained, the Parties agree as follows:

1. RECITALS.

The above recitals are incorporated into this Contract by this reference.

2. ADMINISTRATION.

2.1 This Contract is administered by the Public Works Department, a department of the Brevard County Board of County Commissioners, hereinafter referred to as the Department. Other COUNTY departments may utilize this Contract, but the Public Works Department shall be the department that issues the number for the Task Order. The Task Order number is utilized for COUNTY tracking purposes only. The County department soliciting the proposal for work that results in a Task Order shall then be responsible for the administration associated with its executed Task Order(s) in accordance with this Contract.

2.2 The Contract Documents, as defined in Section 5 below, shall be used to govern this Contract.

3. TERM.

3.1 This Continuing Construction Manager (At Risk) Contract (hereinafter "Contract") is a "continuing contract" as defined under Section 255.103, Florida Statutes, and Brevard County Commission Policy BCC-26.

3.2 The initial term of this Contract is three (3) years after its Date of Execution (the date of last signature below). In addition, the Parties may mutually renew this

Contract in writing, signed by the COUNTY's and the CONTRACTOR's respective authorized designees, for a two-year period beyond the initial contract term under the same terms and conditions outlined herein.

3.3. Survival of Task Orders. The COUNTY shall not issue new Task Order(s) after the expiration date of this Contract. Existing Task Orders may extend beyond this Contract's expiration. In such situations, the Parties agree that the terms and conditions of this Contract survive as to such Task Order(s), and this Contract and the applicable Task Order(s) shall remain in full force and effect until work on the outstanding Task Order(s) is completed.

3.4. Survival of Provision for Services related to Legal Purposes. During the term of this Contract, the Parties agree that the COUNTY may issue a Task Order for the CONTRACTOR to appear or to provide services as an expert or fact witness for any legal or court proceeding related to work performed under this Contract at the hourly rate delineated in this Contract. Additionally, for a period of five years after the expiration of this Contract or any Task Order, upon COUNTY request, the CONTRACTOR expressly agrees that it will provide services as an expert or fact witness for any legal or court proceeding related to work performed under this Contract. This provision, and any provision necessary to enforce it, survives Contract expiration or termination for a period of five years.

4. NON-EXCLUSIVE CONTRACT.

The Parties acknowledge that this Contract is not an exclusive agreement and the COUNTY may employ other similar contractors to furnish services for the COUNTY, as the COUNTY, in its sole discretion, finds is in the public interest. The COUNTY reserves the right to assign such work to the CONTRACTOR as it may approve in the sole discretion of the COUNTY. The Parties agree that the COUNTY is not obligated to execute any Task Order for any specific project or part thereof.

5. DEFINITIONS.

5.1. Change Order. A document issued by the COUNTY to the CONTRACTOR

that describes modifications and/or for revisions to the scope of services, to the schedule for deliverables, and/or to changes in compensation. All Change Orders are subject to the terms and conditions of this Contract.

5.2. Construction Manager. A licensed general contractor or a licensed building contractor, as defined in Section 489.105, Florida Statutes, as may be amended, who coordinates and supervises a construction project from the conceptual development stage through final construction, including the scheduling, selection, contracting with, and directing of specialty trade contractors, and the value engineering of a project.

5.3. Construction Team. The Contractor, the County and the Architect/Engineer, called the "Construction Team", shall work jointly through final construction completion and shall be available thereafter should additional services be required. The Architect/Engineer will provide leadership on design-related matters, and the Contractor shall provide leadership to the Construction Team on all matters relating to construction. The specific representatives of the Construction Team will be finalized with each Task Order authorized by the County.

5.4. Continuing Contract. As defined by Section 255.103, Florida Statutes, as may be amended, means a contract with a construction management entity or program management entity for work during a defined period on construction projects described by type which may or may not be identified at the time of entering into the contract. Pursuant to Section 255.103(4), Florida Statutes, as may be amended, the COUNTY's authority includes entering into a continuing contract for construction projects in which the estimated construction cost of each individual project under the contract does not exceed \$4 million.

The services for Projects under this Contract will be contracted for through Task Orders, negotiated between the parties to this Contract, upon the issuance of associated Notices to Proceed. The work required by such Task Orders will be subject to the terms and conditions of this Contract.

5.5. Contract Documents. The Contract Documents shall be used to govern this Contract. Contract Documents consist of this Contract with attachments, Task Orders,

FEMA, ARPA, and other Federal or State regulations contract clauses (as may be applicable to a specific Task Order as referenced in the Task Order), General Conditions, attached and incorporated herein as Attachment A, Requests for Information (R.F.I.), Drawings and Specifications, Guaranteed Maximum Price, (G.M.P.), any conditions of the Task Order (general, special, supplementary, etc.), permit conditions, grant funding requirements (if any), addenda, change orders, amendments, contract renewals, and other documents that are or may be agreed to by the Parties. The Contract Documents referenced in this section are incorporated into this Contract by this reference. Unless stated otherwise by the COUNTY, in the case of any conflict between the Contract Documents, the order of precedence shall be as follows (as applicable): (1) Change Orders; (2) Task Orders; (3) Amendments (with those of later date having precedence over those of earlier date); (4) this Contract (COUNTY-CONTRACTOR Contract); (5) Specifications; (6) Drawings; (7) General Conditions; (8) the COUNTY's Request for Qualifications, including any attachments and addenda; (9) the CONTRACTOR's submission; (10) any applicable bonds; (11) certificate(s) of insurance; and, (12) any other associated documents, whether or not any of the foregoing listed documents have been attached hereto.

5.6. COUNTY. Brevard County, Florida. For the purposes of this Contract, the COUNTY may also include the Project Director and Construction Coordinator with regard to the performance of designated functions and duties specified for each under the terms and provisions of this contract. All communications directed to the COUNTY shall be directed to the Project Director and Construction Coordinator.

5.7. Date of Execution. This Contract's date of execution, and the effective date of the Contract, is the date upon which it is fully executed/signed by both Parties.

5.8 Guaranteed Maximum Price (G.M.P.). The G.M.P. for each Project shall include the cost of the Work required by the Task Order and Contract Documents, and the CONTRACTOR'S construction manager fee. The G.M.P. will be negotiated based on Contract Documents, Plans and Specifications for each Project. The G.M.P. may include

the cost for COUNTY direct purchases; however, all COUNTY direct purchases plus applicable sales tax will be deducted via Change Orders in accordance with the COUNTY's Direct Purchasing Procedure, which is included in Attachment A. All costs in excess of the final approved G.M.P. (as adjusted by COUNTY direct purchases, if any), are the responsibility of the CONTRACTOR. Any savings between the G.M.P. (as adjusted for COUNTY direct purchases) and the sum of the actual cost of the Project will be returned to the COUNTY.

5.9. Project. A Project is the total work to be performed as authorized by a Task Order under this Contract. A Project may consist of planning, design review, permitting, construction (which includes all labor, equipment, material and supervision) and code inspection necessary to build/construct and complete the Scope of Work identified in each Task Order (Scope of Work).

5.10. Purchase Order. The COUNTY's document used to authorize a purchase transaction with a contractor, generally used for one-time purchases or open framework purchase orders, which contains provisions for goods and/or services ordered, applicable terms as to payment, discounts, date or performance, transportation, and other factors or conditions relating to the transaction. Acceptance of a purchase order by a vendor shall constitute a contract, except in instances in which a purchase order is used only as an internal encumbrance document in SAP. For purposes of this Contract, except for the purchase order issued in SAP for this Contract, or any internal encumbrance documents issued in SAP, all other purchase orders issued under this Contract shall be governed by the terms for Task Orders in this Contract.

5.11 Public Construction Bond. A Public Construction Bond will be provided to the COUNTY by the CONTRACTOR for each Project which exceeds \$100,000 in construction cost. Insurance must be provided to the COUNTY by the CONTRACTOR for each Project as specified in the Task Order.

5.12. Scope of Work. A general description of the Work to be provided built/constructed/installed under this Contract per authorized Task Order.

5.13. Task Order. A document issued, pursuant to this Contract, by the

COUNTY to the CONTRACTOR that describes a finite amount of work for a finite payment. For this Contract, whether described as a Task Order or Purchase Order, all such Orders shall be treated as Task Orders and subject to the provisions in this Contract relating to Task Orders.

5.14. Work. A general term for the goods and/or services provided by the CONTRACTOR under this Contract.

5.15. Work Product. A term for all material, which may be copyrighted or trademarked, with the prior written consent of the COUNTY, which CONTRACTOR creates for COUNTY under a Task Order as a Task Order deliverable and including, but not limited to, reports, tracing, plans, specifications, data, maps, contract documents, drawings, writings, surveys, photographs, video, and other products created in the process of creating the Task Order deliverables. As a Task Order deliverable, work product is to be provided to the COUNTY for its use and, unless the work product, or a portion thereof, is copyrighted or trademarked with the prior written consent of the COUNTY, it shall become the property of the COUNTY.

6. SCOPE OF SERVICES.

6.1. The scope of services consists of Construction Manager (At Risk) services. Services to be provided may include pre-construction and/or construction phase services using the Construction Management (At Risk) Method. Projects may include new construction or renovations of County-owned facilities including jails, courthouses, libraries, parks, fire stations, office space, etc.

6.2. The CONTRACTOR understands and acknowledges that, unless otherwise stated, **TIME IS OF THE ESSENCE** for the Work required under this Contract and associated Task Orders.

7. STANDARD OF CARE REQUIRED FOR SERVICES.

7.1. CONTRACTOR agrees to perform services associated with the requested work in accordance with this Contract and applicable executed Task Order(s), in a manner consistent with the professional skill and degree of care and diligence ordinarily provided

by other similar professionals in the same or similar locality under the same or similar circumstances and as further set forth herein.

7.2. CONTRACTOR further agrees that the standard of care required of CONTRACTOR to provide the services under this Contract includes the following, and the CONTRACTOR shall:

7.2.1. The CONTRACTOR agrees to furnish its best skill and judgement and to cooperate with the Architect/Engineer, where applicable, in furthering the interest of the COUNTY. The CONTRACTOR agrees to furnish efficient business administration and supervision and to use its best efforts to complete the Project(s) in an expeditious and economical manner consistent with the interests of the COUNTY.

7.2.2 The Construction Team: The CONTRACTOR, the COUNTY and the Architect/Engineer (the "Construction Team") will work as a team through construction completion. The CONTRACTOR shall provide leadership to the Construction Team on all matters relating to construction. The Architect/Engineer will provide leadership to the Construction Team on all matters relating to design.

Ensure the adequacy of work provided under this Contract with appropriate due diligence and a reasonable standard of care in a manner that adequately captures scope, complexity and design constraints. This includes, but is not limited to, environmental, geotechnical, architectural, landscape architecture, and surveying professional services and appropriate site visits.

7.2.3. Correct any errors and omissions, and prepare any necessary plan revisions not involving a change in the scope of the work required, that may be required because work was determined by the County to be unsatisfactory, substandard, defective and/or not otherwise not in compliance with the standard of care as set forth in this Contract at no additional cost. Any person or entity may bring concerns about the work to the attention of the COUNTY for its review and determination. This remedy shall be cumulative to all other remedies available under law.

7.2.4. Be responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports, and other services furnished by CONTRACTOR under this Contract. CONTRACTOR shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, specifications, reports, and other services.

7.2.5. Be responsible for recruiting, hiring, training, supervising, disciplining and discharging personnel necessary to maintain an adequate staff of experienced and qualified personnel licensed in the State of Florida to perform all services contemplated by this Contract. The CONTRACTOR shall not be allowed to substitute project team members named in its response, during the course of the Contract, without prior written permission of the COUNTY.

7.2.6. Comply with federal, state and local laws, codes and ordinances applicable to the work. Failure or inability on the part of CONTRACTOR to have complete knowledge and intent to comply with such law, rules, and regulations shall not relieve CONTRACTOR from its obligation to completely perform any task assigned pursuant to this Contract.

7.2.7. Cooperate fully with COUNTY in the scheduling and coordination of all phases of the work.

7.2.8. Cooperate and coordinate with other COUNTY contractors, as specified in the Task Order.

7.2.9. Exercise an appropriate Quality Control Program to provide adequate oversight and supervision over all of CONTRACTOR's sub-contractors.

7.2.10. Report the status of the work to the COUNTY as required in the Task Order or upon request and hold pertinent data, calculations, field notes, records, sketches and other projects open to the inspection of the COUNTY or its authorized agent at any time.

7.2.11. Submit all design computations, sketches and other data representative of the work's progress for the County's review as specified in the applicable Task Order. Submit the final work upon incorporation of any modifications requested by the COUNTY during any previous review, for the County's review. Any COUNTY approval of the CONTRACTOR'S plans, design, or specifications shall not be deemed to diminish or waive the standard of care or skill required of the CONTRACTOR.

7.2.12. Confer with COUNTY during the further development and implementation of improvements for which the CONTRACTOR has provided design or other services.

7.2.13. Interpret plans and other documents.

7.2.14. Meet project deliverable dates established in each individual Task Order.

7.2.15. Prior to final approval of the work by COUNTY, conduct and complete a preliminary check of any construction or other documents through any review committee, third party contractor or any county, city, state or federal agency from which a permit or other approval is required. Any approval obtained from COUNTY or any other agency shall not be deemed to diminish or discharge the standard of care or warranty of CONTRACTOR as provided for in this Contract.

8. QUALITY CONTROL.

8.1. The CONTRACTOR agrees to a high level of quality control and accuracy in keeping with its standard of care. The COUNTY may request additional data collection or re-analysis of data at no expense to the COUNTY. If the original data collected and/or data analysis is later found to be accurate and reasonable, the CONTRACTOR shall be compensated for the additional work in accordance the Contractor's hourly rate for staff performing the work and providing verifiable documentation.

8.2. The CONTRACTOR acknowledges that the COUNTY will periodically evaluate the CONTRACTOR'S performance and that the evaluation will be used by the

COUNTY in determining the CONTRACTOR'S qualifications for future contracts with the COUNTY.

9. USE OF TASK ORDERS.

9.1. Generally. All services or work provided by the CONTRACTOR for COUNTY shall be identified in written Task Orders and performed to the current professional standards of the applicable discipline and as further set forth in the standard of care section. Task Orders shall entail a description of services to be performed, a statement of fees and/or the Guaranteed Maximum Price (G.M.P), Project Conditions, and a Project schedule . Upon request by the COUNTY, the CONTRACTOR shall also provide a work effort, cost schedule, and/or subcontractor proposals. The COUNTY's procedures for the direct purchases of selected materials so that the COUNTY may take advantage of its tax-exempt status will be included in the Task Order, as applicable.

9.2. Effective. A Task Order shall not give rise to any contractual rights until both Parties have caused the Task Order to be executed by their duly authorized representatives and a written Notice to Proceed for the respective Task Order is issued by the COUNTY. The CONTRACTOR shall commence work as indicated in the written Notice to Proceed issued by the COUNTY subsequent to the execution of a Task Order. The CONTRACTOR shall complete the work in accordance with the executed Task Order. **The CONTRACTOR acknowledges that time is of the essence for all work performed under this Contract.** All written Notices to Proceed and executed Task Orders are incorporated to this Contract by this reference and shall constitute a contract addendum to this Contract.

The CONTRACTOR will provide the COUNTY with a written list of the names, company/corporate titles, business addresses and business telephone number(s) of those officers, agents or employees of the CONTRACTOR authorized to execute Task Orders, issued under this Contract, on its behalf. This list shall be signed by the officer or agent executing this Contract on behalf of the CONTRACTOR and shall be submitted with this executed Contract. Any changes, deletions or additions to this list of authorized signatories to Task Orders shall be submitted in writing to the County by the officer or

agent executing the Contract upon the CONTRACTOR becoming aware of the need for such change.

9.3. Order of Work. The COUNTY shall identify which units or sections of the work on which CONTRACTOR shall proceed and in what order. If the CONTRACTOR maintains that a Task Order requires a change in schedule that does not impact the scheduled completion date, a revised schedule shall be submitted in writing for COUNTY consideration, and commencement of any such schedule revision is contingent on approval by the COUNTY.

In the event CONTRACTOR experiences any delay in completing the Task Order resulting from circumstances beyond its control, the CONTRACTOR shall provide immediate notice in writing to the COUNTY for consideration if additional compensation and/or time is requested by the CONTRACTOR. The CONTRACTOR waives any right to make a claim based upon a delay if such written notice was not provided.

A request for time extension shall include a detailed justification for the delay along with an updated project completion schedule. Upon receipt of the request for a time extension, the COUNTY shall review the justification and may request additional information as needed to consider the time extension request. Furthermore, some Projects, such as Federal-aid eligible projects, may require additional approvals which will be coordinated by the COUNTY.

Time extensions are granted at the discretion of the COUNTY.

9.4. COUNTY Assistance. Where appropriate, the COUNTY shall make COUNTY personnel with knowledge of the operation of the COUNTY as it relates to the Task Order available to assist CONTRACTOR. The COUNTY shall make its facilities accessible to the CONTRACTOR, where feasible, and as required for CONTRACTOR's performance of services under this Contract. In those instances where the CONTRACTOR may deem it necessary to obtain access or entry upon privately owned property in its performance of the Contract, the CONTRACTOR may request assistance from the COUNTY in facilitating such access. The COUNTY shall assist as is feasible.

9.5 Change Order

9.5.1. A Change Order shall be required to process modifications to the Task Order for revisions to the scope of services, time revisions, and/ or changes in compensation. The Parties agree COUNTY may modify the scope of a project in a Task Order as the COUNTY deems appropriate, including a commensurate increase or decrease in the fee.

All Change Orders must be in writing and approved by both Parties. A Change Order shall not give rise to any contractual rights until both Parties have caused the Change Order to be executed by their duly authorized representatives.

10. FORCE MAJEURE

10.1. The CONTRACTOR shall not be liable for its failure to perform hereunder if its performance is rendered impossible or delayed by any unforeseen act, event or condition beyond its reasonable control which by the exercise of due diligence it shall be unable to overcome. Such unforeseen acts, events or conditions shall include, but not be limited to, the following: Acts of God, hurricanes, tornado, lightning, or earthquake; strikes or lockouts; acts of war, civil insurrection, riots or terrorism; fire or flood not caused by the Party unable to perform; change in law not due to the improper conduct of the CONTRACTOR, or any of its agents or employees; pandemics or quarantines. Notwithstanding anything in this Contract to the contrary, the term "Force Majeure" does not include and the CONTRACTOR shall not be excused from performance under this Contract for events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance or other expenses of performing the services hereunder. The COUNTY will not grant any extensions of time for circumstances that existed or that the CONTRACTOR knew of or should have known about at the time of this Contract was executed or any associated task order, change order, addendum, etc. was entered into by the parties or Notice to Proceed was issued by the COUNTY.

10.2. The failure to perform must occur directly, exclusively and contemporaneously with the Force Majeure event. Should the CONTRACTOR be

obstructed or delayed in the prosecution or completion of its services or work as a result of said unforeseeable causes beyond the control of the CONTRACTOR and not due to its own fault and neglect, CONTRACTOR shall, within 10 hours of the time the delay becomes apparent, notify the COUNTY of such delay in writing stating the cause or causes thereof, failing which the CONTRACTOR shall waive any right the CONTRACTOR may have to request a reasonable extension of time to complete the work required by the Task Order. Such reasonable extensions of time to complete the Task Order shall be the sole remedy of the CONTRACTOR for such delays, and the CONTRACTOR will not be entitled to any damages or any claim for extra compensation.

11. COMPENSATION AND REIMBURSABLE COSTS.

11.1. GENERAL. As consideration for providing services, the COUNTY agrees to pay, and CONTRACTOR agrees to accept, a fee for services. The fee for services for the applicable Task Order is the only compensation to which CONTRACTOR is entitled, unless pre-approved reimbursable costs are listed in the Task Order. The CONTRACTOR shall include in the fee for services all office overhead, employee benefits, normal business travel, and other support for overhead services required for performance of any and all duties or obligations described in the applicable Task Order.

11.2. Fee for Services.

11.2.1. Guaranteed Maximum Price. At the option of the COUNTY, the Parties may mutually agree upon a Guaranteed Maximum Price (G.M.P.) for a Project. The G.M.P. shall include the Cost of the Work required by the Contract Documents, and the CONTRACTOR's construction manager's fee. The G.M.P. will be negotiated based on Contract Documents, Plans & Specifications for each proposed Project provided by the COUNTY.

11.3. Reimbursable Expenses or Costs. CONTRACTOR shall be compensated for certain work-related expenditures NOT covered by the fee for service only if the CONTRACTOR has obtained written pre-approval from the COUNTY prior to incurring the expense. If an expense is not pre-approved by the COUNTY, the CONTRACTOR will not be entitled to be compensated by the COUNTY for such expense. When requesting

COUNTY pre-approval for an expense, CONTRACTOR must provide a written justification for the expenses accompanied by copies of invoices, receipts, requisitions, and/or estimates (if actual expense cannot be provided until actual cost is incurred) to document the need for the expense. COUNTY, upon receipt of satisfactory documentation, will provide CONTRACTOR with its written decision on approval or rejection of said expenses. CONTRACTOR must submit the final receipts, invoices, and any other necessary back-up documentation requested by the COUNTY, for expenses incurred in order to be reimbursed by the COUNTY. The COUNTY will reimburse CONTRACTOR for pre-approved expenses at actual cost(s) (no markup or percentage increase will be paid by the COUNTY). Types of reimbursable expenses may include:

11.3.1. Documents and Incidentals. Expenses for document reproduction or other incidental expenses. These expenses shall be reimbursed on a direct cost basis to cover labor and expenses.

11.3.2. Contractual Costs. Subcontractors shall be reimbursed at the expense of such cost. Requests for copies of invoices, receipts must accompany reimbursement of Contractual Costs, purchase requisitions, etc. to document the charges.

11.3.3. Equipment Costs. Equipment shall be reimbursed at the cost of rental or purchase cost. Equipment purchased is the property of the COUNTY and must be returned upon the completion of the related Task or Purchase Order.

11.3.4. Travel Costs. The Parties agree that travel costs for normal business travel necessary under the performance of this Contract is included in the CONTRACTOR's hourly fee. COUNTY, in its sole discretion, may approve a CONTRACTOR's request for reimbursement for special travel required under extenuating circumstances as part of a Task Order. If approved, such travel shall be reimbursed at the same rate as for COUNTY employees in accordance with the most current version of County Administrative Order AO-21, entitled "Travel", (issued by the County Manager of Brevard County, copy available upon request) which administrative order is incorporated to this Contract by this reference, and

Section 112.061, Florida Statutes. All CONTRACTOR requests for special travel must be documented on a State of Florida Travel Voucher with appropriate receipts. Without prior written approval, COUNTY is not responsible for reimbursing CONTRACTOR for said travel.

11.3.5. Permits, Licenses and Fees. Generally, unless specifically authorized, permits, fees and licenses necessary for performance of work pursuant to this Contract will not be waived by COUNTY, and CONTRACTOR shall be responsible for obtaining, and shall pay for their own professional permits, fees, and licenses, as required. If authorized, and not treated as a reimbursable cost, the COUNTY shall pay directly to the governing authority, the cost of permits, fees, and/or licenses required for completion of the scope of services for a particular Task Order.

11.3.6. Other miscellaneous expenses previously authorized in writing by the COUNTY.

12. BILLING, PAYMENT AND PARTIAL PAYMENTS

12.1. General. COUNTY will make payment to CONTRACTOR through County Finance according to Brevard County Administrative Order AO-33 (issued by the County Manager of Brevard County, copy available upon request) and Florida's Local Government Prompt Payment Act, Chapter 218, Part VII, Florida Statutes, including provision of an IRS Form W-9. CONTRACTOR payments are subject to COUNTY's right to withhold any amounts reasonably necessary to complete or correct substandard work or work not in compliance with the terms of this Contract. The COUNTY will not honor any claim for services rendered by CONTRACTOR that is not specifically provided for in this Contract or a Task Order under this Contract.

12.2. Process for Payment of Invoices.

12.2.1. CONTRACTOR shall submit invoices for payment to COUNTY on a monthly basis. The CONTRACTOR's request for payment shall be in the form and in the manner, required by the COUNTY, and shall relate to work performed since

the last invoiced work. The COUNTY may require supplemental and accompanying data to support CONTRACTOR's request for payment.

12.2.2. The amount of each invoice submitted shall be the amount due for all services performed to date in connection with authorized work, as certified by the CONTRACTOR. Each invoice shall include only authorized work and must reference the particular Task Order that authorized the services performed. The CONTRACTOR shall include with its invoice, copies of all invoices paid by the CONTRACTOR for expenses.

13. OWNERSHIP AND REUSE OF WORK PRODUCT.

13.1. The COUNTY agrees to furnish to CONTRACTOR, upon request, for inspection and copying, any known documents or data available in the COUNTY's files pertaining to the work to be performed under this Contract which may be reasonably required by CONTRACTOR to be performed under this Contract. To the extent COUNTY provides such documents or data to CONTRACTOR for CONTRACTOR's use in a project, COUNTY agrees to obtain, or cause to be obtained, any releases, permits or authorization necessary for the use of the documents or data. The COUNTY agrees to hold CONTRACTOR harmless for any claims arising with respect to COUNTY's releases, permits or authorization for the use of the documents.

13.2. To the extent CONTRACTOR provides Work Product that CONTRACTOR did not create to COUNTY for the COUNTY's use, CONTRACTOR agrees to obtain, or cause to be obtained, any releases, permits or authorizations necessary for the use of the Work Product by COUNTY to the same extent that CONTRACTOR is required to provide COUNTY in Sections 13.3 and 13.4 below. CONTRACTOR agrees to indemnify and be responsible for any claims arising with respect to such use of Work Product provided by CONTRACTOR in accordance with Section 25 below. CONTRACTOR agrees that in any proposal for a Task Order to use Work Product it did not create, the CONTRACTOR has factored all costs of the use of such Work Product into its proposal and that no additional compensation is owed by COUNTY.

13.3. To the extent CONTRACTOR creates Work Product under this Contract for COUNTY, then to the extent permissible under the law, the Parties agree the Work Product is specially ordered or commissioned as a “work for hire” under 17 United States Code section 101. The CONTRACTOR agrees that COUNTY is the exclusive owner of all Work Product created under this sub-section, without restrictions or limitations upon its use. When each individual section of work requested pursuant to this sub-section is complete, all of the work products shall be delivered to the COUNTY for its use. There shall be no additional compensation for the rights and property granted under this paragraph.

13.4. To the extent CONTRACTOR creates Work Product for COUNTY that falls outside the definition of a “work for hire” under 17 United States Code section 101, by this paragraph, CONTRACTOR grants to COUNTY a royalty-free, world-wide, nonexclusive, irrevocable, unlimited license right in the Work Product created by CONTRACTOR for COUNTY pursuant to the Contract, without restrictions, additional costs, or limitations upon its use. Such license includes an express right for the COUNTY to further sub-license the Work Product, and to create derivative works, without restriction.

13.5. To the extent CONTRACTOR creates Work Product for COUNTY that depends upon original notes, working documents, design calculations, computations and plans, COUNTY shall be entitled to a copy of such materials, without cost, upon request, and further provided said materials shall not be destroyed without the prior written approval of COUNTY.

13.6. For Work Product CONTRACTOR provides to COUNTY where a photograph or video of a person with an identifiable face appears, CONTRACTOR will provide COUNTY with a standard commercial use modeling release, in writing (a sample model release is attached as Attachment C). Faces which are blurred to be unrecognizable do not require such a modeling release. The release will include the model’s name, age, and date of birth.

13.7. Reuse of Work Products.

13.7.1. CONTRACTOR may not reuse plans, specifications, or reports specifically developed by CONTRACTOR for COUNTY without express written permission from COUNTY.

13.7.2. In accordance with Section 287.055(10), Florida Statutes, and Sub-section 13.3 of this Contract, the COUNTY may reuse any plans, specifications, or reports provided under this Contract, subject to any conditions in the Task Order.

14. FEDERAL CONTRACT PROVISIONS.

14.1. Task Orders may be issued under this Contract which will involve funding, for the work provided for under the Task Order, to be compensated or reimbursed (to the COUNTY) by funds authorized through FEMA and/or ARPA, or other federal regulations. In such case, the Task Order will specifically note the source of any such funds and set forth the additional contract clauses with which the CONTRACTOR is required to comply with in performing the work. The additional clauses required for FEMA and/or ARPA funding/reimbursement are attached as Attachment B. Additional contract clauses may be attached to Task Orders, as needed.

14.2. The special clauses of either FEMA and/or ARPA set forth in Attachment B, respectively, control over any conflicting clauses otherwise set forth in the Contract.

15. AUDIT RIGHTS AND PUBLIC RECORDS.

15.1. In performance of this Contract, CONTRACTOR shall keep books, records, and accounts of all activities related to this Contract in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by CONTRACTOR in conjunction with this Contract, and the performance of this Contract, shall be open to inspection during regular business hours by an authorized representative of COUNTY. The COUNTY or any of its duly authorized representatives reserves the right to audit the CONTRACTOR's records related to this Contract at any time during the performance of this Contract and for a period of five years after final payment is made, or otherwise required by law.

15.2. Upon completion of the Contract, the CONTRACTOR shall transfer, at no cost to the COUNTY, all public records in possession of the CONTRACTOR or keep and maintain public records required by the COUNTY to perform the service. If the CONTRACTOR transfers all public records to the COUNTY upon completion of the Contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Contract, the CONTRACTOR shall meet all applicable requirements for retaining public records, and shall retain all documents, books and records for a period of five (5) years after termination of this Contract, unless such records are exempt from Section 24(a) of Article 1 of the State Constitution and Chapter 119, Florida Statutes. All records stored electronically must be provided to the COUNTY, upon request from the COUNTY's custodian of public records, in a format that is compatible with the information technology systems of the COUNTY.

15.3. All records or documents created by the COUNTY or CONTRACTOR in connection with this Contract are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. It is CONTRACTOR's duty to identify any information in records created by CONTRACTOR which it deems is exempt or confidential from public records laws under Florida or federal law and identify the statute number which requires the information be held exempt. All records stored electronically by the CONTRACTOR must be provided to COUNTY in a format compatible with the information technology systems of COUNTY.

15.4. CONTRACTOR shall ensure that public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Contract and following termination of the Contract if the CONTRACTOR does not transfer the records to COUNTY.

15.5. Pursuant to Section 119.0701, Florida Statutes, a request to inspect or copy public records relating to this Contract must be made directly to COUNTY. If COUNTY does not possess the requested records, COUNTY shall immediately notify the CONTRACTOR of the request and if CONTRACTOR possesses the records,

CONTRACTOR must provide the records to the COUNTY or allow the records to be inspected or copied within twenty-four (24) hours (not including weekends and legal holidays) of the request so COUNTY can comply with the requirements of Section 119.07, Florida Statutes. The CONTRACTOR may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County Administrative Order AO-47 (issued by the County Manager of Brevard County, copy is available upon request), incorporated herein by this reference.

15.6. If CONTRACTOR possesses the records, but fails to provide the requested public records to COUNTY within a reasonable time, pursuant to Sections 119.0701 and 119.10, Florida Statutes, the CONTRACTOR may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties. The CONTRACTOR's failure to comply with public records requests is considered a material breach of this Contract and grounds for termination.

15.7. Should COUNTY face any legal action to enforce inspection or production of the records within CONTRACTOR's possession and control, CONTRACTOR agrees to indemnify COUNTY for all damages and expenses, including attorney's fees and costs. CONTRACTOR shall hire and compensate attorney(s) to represent CONTRACTOR and COUNTY in defending such action. CONTRACTOR shall pay all costs to defend such action and any costs and attorney's fees awarded pursuant to Section 119.12, Florida Statutes.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: ROBERT HENDRICKS, 2725 JUDGE FRAN JAMIESON WAY, ROOM A-201, VIERA, FL 32940, 321-617-7202, ROBERT.HENDRICKS@BREVARDFL.GOV.

16. INDEPENDENT CONTRACTOR.

The COUNTY contracts for the services of the CONTRACTOR as an independent contractor, and not as an employee. Nothing in this Contract shall be construed to create a partnership, joint venture or agency relationship between the Parties. Neither Party shall have the authority to enter into any Contract of any kind on behalf of the other, or to bind or obligate the other to any third party. As an independent contractor, CONTRACTOR is not entitled to any of the rights, privileges or benefits of COUNTY employees.

17. EQUAL OPPORTUNITY EMPLOYMENT.

CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment for work under this Contract because of race, color, religion, sex, sexual orientation, gender identity, age, national origin, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, sexual orientation, gender identity, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfers; recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

18. UNAUTHORIZED ALIEN WORKERS AND EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY).

18.1. Unauthorized Alien Workers. The COUNTY will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 United States Code Section 1324 (a) of the Federal Immigration and Nationality Act. The COUNTY shall consider a contractor's intentional employment of unauthorized aliens as grounds for immediate termination of this Agreement.

18.2. The CONTRACTOR shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired

by the CONTRACTOR during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. All contractors shall meet this requirement unless they are a sole proprietor who does not hire employees and therefore is not required to file a Department of Homeland Security Form I-9 or the Contract is being executed with a company based outside of the United States of America and does not have a corporation or office within the United States of America and does not employ United States of America citizens.

18.3. Upon request, the CONTRACTOR agrees to provide a copy of the E-Verify Memorandum of Understanding signed by CONTRACTOR and the Department of Homeland Security.

18.4. CONTRACTOR agrees 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 COUNTY consistent with the terms of CONTRACTOR's enrollment in the program. This includes maintaining a copy of proof of CONTRACTOR's and any subcontractors' enrollment in the E-Verify Program.

18.5. Compliance with the terms of this section is made an express condition of this Contract and the COUNTY may treat a failure to comply as a material breach of this Contract.

18.6. A contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-Verify program, the contractor hires or employs a person who is not eligible for employment.

18.7. Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

19. SUBCONTRACTING.

The CONTRACTOR shall not subcontract, assign, or transfer any work under this Contract without the prior written approval of the COUNTY, including a change of subcontractor. When applicable, the CONTRACTOR shall cause the names of any subcontracted firms responsible for major portions (or separate specialty) of the work to be inserted in the Task Order. The CONTRACTOR shall remain, at all times, liable for the proper performance and completion of all work and other services required under this Contract, including supervision and administration of all such sub-contracted personnel, firms and companies, and including any errors or omissions by said sub-contractors. The CONTRACTOR shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, specifications, reports, and other services performed by subcontractor.

20. ASSIGNMENT.

The COUNTY and CONTRACTOR each bind its respective entity, and its successors, legal representatives, and assigns, to the other Party to this Contract, and to the partners, successors, legal representatives, and assigns of such other Party, and in respect to all covenants of this Contract. Neither Party shall assign or transfer their interest in this Contract without the prior written consent of the other Party. In the event that the CONTRACTOR changes its name, merges with another company, becomes a subsidiary or makes other substantial change in structure or in principals, the COUNTY reserves the right to terminate this Contract subject to the terms prescribed above.

21. CONFLICTS OF INTEREST.

21.1. No officers, members or employees of COUNTY, and no members of its governing body, and no other public official of the governing body of the locality or localities in which services for the facilities are situated or carried out, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Contract, shall participate in any decision relating to this Contract which affects their personal interest, or have any personal or pecuniary interest, direct or indirect, in this Contract or the proceeds thereof.

21.2. A conflict of interest is any situation in which the CONTRACTOR, its employees or subcontractors, are in a position to exploit their professional relationship with COUNTY in any way for their personal or corporate benefit. The CONTRACTOR is specifically aware of, and concurs with, the public need for COUNTY to prohibit any potential conflicts of interest that may arise as a result of execution of this Contract. CONTRACTOR covenants that it has extensively reviewed all of its contracts, letters of agreement, and any other indication of commitment on its behalf to perform professional services which could in any way present the reasonable possibility of an actual conflict of interest with COUNTY. The CONTRACTOR covenants that it presently has no conflict of interest and shall not acquire any interest, direct or indirect, which shall conflict in any manner or degree with the performance of services required to be performed under this Contract. CONTRACTOR further covenants that in the performance of this Contract, CONTRACTOR shall employ no person having any such interest. CONTRACTOR shall disclose in writing to COUNTY any conflict of interest affecting CONTRACTOR's services to COUNTY as soon as it becomes aware of the conflict.

22. COVENANT AGAINST CONTINGENT FEES.

As required by Section 287.055(6), Florida Statutes, the CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract and that CONTRACTOR has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. For any breach or violation of this provision, the COUNTY shall have the right, but not the duty, to terminate this Contract, without liability, and, at its discretion, to deduct from the contract price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any damages and shall be responsible for reporting the details of such breach or violation to the proper legal authorities where and when appropriate.

23. PUBLIC ENTITY CRIMES.

23.1. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from date of being placed on convicted vendor list.

23.2. CONTRACTOR shall provide a fully executed Public Entity Crimes Affidavit in accordance with Section 287.133, Florida Statutes, which when completed, is attached and incorporated to this Contract as Attachment D.

24. SCRUTINIZED COMPANIES LIST.

24.1. CONTRACTOR shall provide a fully executed Scrutinized Companies that Boycott Israel List Affidavit in accordance with Section 287.135, Florida Statutes, which is attached and incorporated to this Contract as Attachment E.

24.2. The CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes, the COUNTY may immediately terminate this Contract at its sole option if the CONTRACTOR or its subcontractors are found to have submitted a false certification; or if the CONTRACTOR, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel during the term of this Contract.

24.3. If this Contract is for more than one million dollars, the CONTRACTOR further certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum

Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes.

24.4. Pursuant to Section 287.135, Florida Statutes, the COUNTY may immediately terminate this Contract at its sole option if the CONTRACTOR, its affiliates, or its subcontractors are found to have submitted a false certification; or if the CONTRACTOR, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Contract.

24.5. The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.

24.6. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize these contracting prohibitions, this section shall become inoperative and unenforceable.

25. INDEMNIFICATION AND INSURANCE.

25.1. CONTRACTOR shall hold COUNTY harmless against any and all claims for and related in any way to bodily injury, sickness, disease, death, personal injury, damages to property of any kind (including but not limited to loss of use of any property or assets resulting therefrom), fines, penalties, schedule delay claims of any kind, including but not limited to loss of efficiency or productivity, arising out of or resulting from the performance of the products or services for which COUNTY is contracting hereunder, to the extent caused by the negligent, reckless, or intentional wrongful conduct, acts, or omissions of CONTRACTOR, or any of its agents or employees, including subcontractors. Such acts or omissions by CONTRACTOR include, but are not limited to, any errors or omissions in the CONTRACTOR'S services, including, but not limited to, design services.

25.2. The CONTRACTOR agrees to fully indemnify COUNTY and pay the cost of COUNTY'S legal defenses, including reasonable fees of attorneys as may be selected by COUNTY, for all claims described in the hold harmless clause above and shall defend,

satisfy, and pay any judgments which may be rendered against the County in connection with the above hold harmless agreement. Such payment on behalf of the COUNTY shall be in addition to any and all other legal remedies available to the COUNTY and shall not be considered to be the COUNTY'S exclusive remedy. It is agreed by the Parties hereto that specific consideration has been received by the CONTRACTOR under this Contract for this hold harmless/indemnification provision.

25.3. Notwithstanding any other provisions of this Contract, this indemnification section applies to both COUNTY and third-party claims and shall survive the termination of this Contract. Nothing in this section is intended to nor shall it constitute a waiver of the sovereign immunity of Brevard County. Further, the COUNTY's liability hereunder shall be subject to the COUNTY's common law right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes.

25.4. Any additional hold harmless and/or indemnity requirement will be dictated by the specific work, goods, products or services provided under the subject/specific Task Order and addressed in the Task Order.

25.5 Loss deductible – The COUNTY shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy, except for Builder's Risk if provided for elsewhere herein. The payment of the deductible shall be the sole responsibility of the CONTRACTOR and/or subcontractor providing such insurance.

**25.6. PURSUANT TO SECTIONS 558.002 AND
558.0035, FLORIDA STATUTES, A DESIGN
PROFESSIONAL WHO IS AN EMPLOYEE OR AN AGENT
OF CONTRACTOR MAY NOT BE HELD INDIVIDUALLY**

LIABLE FOR NEGLIGENCE IF CONTRACTOR MAINTAINS THE PROFESSIONAL LIABILITY INSURANCE REQUIRED BELOW AND THE DAMAGES ARE SOLELY ECONOMIC IN NATURE AND DO NOT EXTEND TO PERSONAL INJURIES OR PROPERTY NOT SUBJECT TO THIS CONTRACT.

25.7. CONTRACTOR shall procure and maintain, at their own expense and without cost to COUNTY, the following types of insurance described below. CONTRACTOR shall be liable and responsible for errors and omissions in the performance of any and all Contract responsibilities and shall carry professional liability insurance and indemnify the COUNTY against errors and omissions as specified herein below. The CONTRACTOR acknowledges that the COUNTY may require additional levels and/or types of insurance, as referenced in Subsection 25.8 below, be procured and maintained based on the specific work identified in a Task Order. The CONTRACTOR shall show proof that such increased coverage(s) have been procured and are in place in accordance with this Section.

- General Liability Insurance policy with a \$1,000,000 combined single limit for each occurrence to include the following coverage: Operations, Products and Completed Operations, Personal Injury, Contractual Liability covering this Contract, "X-C-U" hazards, and Errors & Omissions.
- Auto Liability Insurance policy with includes coverage for all owned, non-owned and hired vehicles with a \$1,000,000 combined single limit for each occurrence.
- Workers' Compensation and Employer's Liability Insurance providing statutory benefits as required in the State of Florida. The Contractor shall require any subcontractor to provide evidence of this coverage. Additionally, if the contract requires working on or around a navigable waterway, the Contractor and all subcontractors shall provide evidence of United States Longshoremen's and Harbor Workers (USL&H) coverage and contingent coverage of Jones Act (Marine Employers Liability) in compliance with Federal statutes, or proof of exemption.

25.8. CONTRACTOR shall provide Certificates of Insurance and applicable endorsement pages to the COUNTY demonstrating that the aforementioned insurance requirements have been met within five (5) working days (Monday through Friday) of the CONTRACTOR'S execution of this Contract. CONTRACTOR shall provide any additional or specific Certificates of Insurance and applicable endorsement pages for any additional insurance requirements set forth for a given Project as provided for in the Task Order within five (5) working days of the issuance of the Notice to Proceed by the COUNTY. No work shall begin under this Contract and/or Task Order until the Certificates of Insurance and endorsement pages have been received and approved by the COUNTY.

Additional insurance policies covering specific risks of loss including, but not limited to, Professional Liability, Builders Risk, Crane and Rigging, Pollution, etc., may be required by County Risk Management. Any specialty insurance coverage requirement will be dictated by the specific work, goods, products or services provided under the subject/specific Task Order and addressed in the Task Order.

25.9 Insurance carriers providing coverage required herein must be licensed or authorized to conduct business in the State of Florida and must possess A.M. Best's Financial Strength Rating of A- Class VIII or better. The Certificates of Insurance shall indicate that the policies (except professional liability) have been endorsed to cover Brevard County as an additional insured (a waiver of subrogation in lieu of additional insured status on the Workers' Compensation policy is acceptable) and that these policies may not be canceled or modified without the insurer providing thirty (30) days prior written notice to the COUNTY.

25.10. The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of CONTRACTOR under the terms of the Contract. Subcontractor's insurance shall be the responsibility of CONTRACTOR.

25.11 The CONTRACTOR shall maintain the insurance coverage in compliance with Paragraphs 25.1 through 25.10, above, throughout the term of this Contract (which

includes any Task Order surviving the expiration of the Contract as set forth in paragraph 3). The CONTRACTOR shall maintain any additional insurance coverage required under a specific Task Order throughout the term of the Task Order, until the work required under the Task Order is completed or as otherwise required under the terms of the Task Order, whichever time period is longer. The Contractor shall be responsible for requiring each subcontractor, vendor or supplier to comply with these insurance requirements when applicable.

26. DISPUTE RESOLUTION.

26.1. If COUNTY objects to all or any portion of an invoice, COUNTY shall so notify CONTRACTOR, and indicate in writing what corrective action is required of CONTRACTOR. If a dispute over an invoice occurs, the Parties will work to resolve the dispute in accordance with Brevard County Administrative Order AO-33 (issued by the County Manager of Brevard County, copy available upon request) and Section 218.76, Florida Statutes.

26.2. To the extent the COUNTY requests CONTRACTOR to perform services that the CONTRACTOR believes are not described in the Task Order, or with respect to which there is a disagreement between the Parties as to whether or not the services are already required by a particular Task Order, then CONTRACTOR shall provide written notice to COUNTY of the issue(s), and that CONTRACTOR will follow COUNTY's written directive provided it is without prejudice to CONTRACTOR's right to seek additional compensation from COUNTY. CONTRACTOR shall only provide such service upon receipt of a written COUNTY directive/Notice to Proceed to explicitly perform such service. The COUNTY's delivery of such written directive/Notice to Proceed following CONTRACTOR's notification shall be without prejudice to COUNTY's right to maintain that such services do not constitute the basis for additional compensation under the applicable Task Order.

26.3. Waiver. The waiver by either Party of the other Party's obligations or duties under this Contract shall not constitute a waiver of any other obligation or duty of the other

Party under this Contract, nor shall a waiver of any such obligation or duty constitute a continuing waiver of that obligation or duty.

27. TERMINATION OF CONTRACT.

27.1. Termination for Convenience.

27.1.1. Termination for Convenience by the COUNTY. The COUNTY may terminate this Contract for convenience by giving the CONTRACTOR fourteen (14) calendar days written notice of such termination. If written notice is given by mail, receipt shall be presumed, and the fourteen (14) days shall begin to run, seven (7) calendar days after the date of mailing as dated on the notice. If written notice is provided in-person, the fourteen (14) days shall begin the calendar day after the delivery of the notice. The CONTRACTOR shall stop work immediately unless the COUNTY provides the CONTRACTOR written direction otherwise in the notice.

27.1.2. Termination for Convenience by the CONTRACTOR. The CONTRACTOR may terminate this Contract for convenience by giving the COUNTY sixty (60) calendar days written notice of such termination. If written notice is given by mail receipt shall be presumed, and the sixty (60) days shall begin to run, seven (7) calendar days after the date of mailing as dated on the notice. If written notice is provided in-person, the sixty (60) days shall begin the calendar day after the delivery of the notice. The CONTRACTOR must provide the COUNTY with all records and documentation of all work performed, as of the date of the notice, within 14 calendar days of the notice. The CONTRACTOR will complete the work required by any Task Order for which the work is incomplete as of the date of the notice if so directed by the County in writing and provide such records and documentation of such work upon completion.

27.2. Termination for Failure to Perform. If the CONTRACTOR is failing to perform, the COUNTY will issue a notice of failure to perform to the CONTRACTOR listing the Task Order(s) for which the COUNTY has determined there is a failure to perform and describe the deficiencies in the CONTRACTOR's work. The Notice shall provide the CONTRACTOR with thirty (30) calendar days from the date the Notice is received in

which to correct such deficiencies described in said notice. If the CONTRACTOR fails to correct such deficiencies to the satisfaction of the COUNTY within the stated time period, then the COUNTY may terminate the Contract, or any associated Task Order(s), immediately by providing written notice to the CONTRACTOR for failure to perform. Upon termination by the County, COUNTY may take over the work and cause it to be performed to completion by contract or otherwise. In such case, the COUNTY reserves all rights and remedies available, including, but not limited to, the right to recover COUNTY's additional cost incurred in securing complete performance. The rights and remedies of COUNTY provided in this clause are in addition to any other rights and remedies provided by law or under this Contract. If, after COUNTY's termination of the Contract, or any associated Task Order(s), for failure of the CONTRACTOR to fulfill contractual obligations, it is determined that CONTRACTOR had not failed the contractual obligations, the termination shall be deemed to be a termination for the convenience of COUNTY.

27.3. Upon termination for any reason, the Parties agree that any work satisfactorily completed or services provided by CONTRACTOR prior to the date of termination shall become property of COUNTY. Upon COUNTY request, CONTRACTOR shall deliver to COUNTY Work Product as may have been accumulated by CONTRACTOR in performing this Contract, whether completed or in process.

27.4. Payment on Termination. In the event of termination by COUNTY, the COUNTY's sole obligation to CONTRACTOR shall be payment for those portions of satisfactorily completely performed work previously authorized by approved Task Order. The COUNTY shall not be obligated to pay for any services performed after CONTRACTOR has received the final notice of termination, unless the COUNTY otherwise directs the CONTRACTOR in writing to complete specified elements of the work. Such payment shall be determined on the basis of the hours of work performed by CONTRACTOR, or the percentage or work complete as estimated by CONTRACTOR and agreed upon by COUNTY up to the time of termination. In the event of such termination, COUNTY may, without penalty or other obligation to CONTRACTOR, elect to employ other persons to perform the same or similar services. In the event of deficient professional services, COUNTY shall not pay for the CONTRACTOR for deficient

services; however, if any of the work performed by the CONTRACTOR is used by or useful to any other contractor retained by COUNTY to finish the work, the County will pay the CONTRACTOR for such useful work to the extent that COUNTY does not incur additional costs, or pay twice for the same work, over the work/costs set forth in the canceled Task Order issued to the CONTRACTOR and what the County pays the new contractor.

28. NOTICES AND AUTHORIZED REPRESENTATIVES.

28.1. Authorized Representatives. The Parties agree that in order to facilitate the orderly and efficient implementation of any Task Order, each Party shall appoint an authorized representative(s) for such Party. Each Party specifically acknowledges that such authorized representative has the authority to bind his/her respective entity. The COUNTY’s representative shall have the authority to transmit instructions, receive information, and interpret and define the COUNTY’s policies and decisions pertinent to the work covered by this Contract as long as such transmissions do not result in an increase in the cost of or time to perform work. The Parties understand and agree that the Board of County Commissioners has delegated authority, per Board policies to issue Task Orders, or approve changes or modifications to this Contract or a Task Order. The CONTRACTOR’s representative shall be authorized to act on behalf of CONTRACTOR regarding all matters involving the conduct of its performance under this Contract.

28.2. The Parties' designated representatives and their respective addresses for purposes of this Contract are as follows:

COUNTY	CONTRACTOR
Contracts Supervisor	Erik B. Costin, Vice President
2725 Judge Fran Jamieson Way, Room A-201	1005 Viera Blvd, Ste 202
Viera, FL 32940	Rockledge, FL 32955
(321) 617-7202	(321) 632-7660

28.3 Either Party will have the right to change its authorized representative(s), or to add representatives, from time to time, throughout the Contract, by giving written notice to the other Party in accordance with the Notice Provisions below.

28.4 Notices. All notices required or permitted under this Contract and any written consents or approvals required shall be in writing and are in effect upon receipt. All notices for legal claims, or termination must be transmitted either by personal hand delivery; United States Postal Service (USPS), certified mail return receipt requested; or, overnight express mail delivery. Other notices, such as signed notices to proceed, may be transmitted by E-mail to the authorized representative and shall be effective on the date directed in the notice. The addresses set forth in Section 28.2 above for the respective Parties shall be the places where notices shall be sent, unless prior written notice of change of address is given.

29. ATTORNEY'S FEES, GOVERNING LAW, VENUE, AND WAIVER OF JURY TRIAL.

In the event of any legal action between the Parties arising out of this Contract, each Party shall bear its own attorney's fees and costs. This Contract, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida. Venue for any legal action brought by any Party to this Contract to interpret, construe or enforce this Contract shall be in a State court of competent jurisdiction in and for Brevard County, Florida, and the **PARTIES AGREE TO WAIVE A JURY TRIAL AND ANY TRIAL SHALL BE NON-JURY.** CONTRACTOR consents and waives any objection or defenses relating to Florida state court having jurisdiction over any dispute or claim arising out of this agreement and consents to process being served upon its Florida registered agent. CONTRACTOR expressly waives removal of any claim or action arising under this Contract to federal court. Specific consideration has been given for these waivers.

30. MODIFICATIONS.

The terms of this Contract may be modified upon the mutual agreement of the Parties in writing executed by both Parties with the same formality as herewith.

31. ENTIRETY OF CONTRACT.

Under the terms of this Contract, the Contract Documents of this Contract include this Continuing Professional Services Contract, all Task Orders issued under this Contract, all Notices to Proceed issued under this Contract, all Modifications to this Contract or to any Task Order or Notice to Proceed, all Change Orders, FEMA contract clauses and/or ARPA American Rescue Plan Act contract clauses (as may be applicable to a specific Task Orders as referenced in the Task Order) and any Renewals of the Contract.

This Contract supersedes all prior agreements and negotiations, whether oral or written, respecting such matter.

32. INTERPRETATION.

Both Parties have had the opportunity to consult with legal counsel and to participate in the drafting of this Contract. Consequently, this Contract shall not be more strictly or more harshly construed against either Party as the drafter.

33. SEVERABILITY.

If a court of competent jurisdiction finds any sentence, provision, paragraph, or section, or part thereof, of this Contract void or unenforceable, the remaining parts of this Contract shall continue to full force and effect as though such sentence, provision, paragraph, section had been omitted from this Contract. The Parties shall use their best efforts to rehabilitate and replace the unenforceable provision or provisions of this Contract with lawful terms and conditions approximating the original intent of the Parties.

34. FURTHER ASSURANCES.

Each Party, without further consideration, shall take such action, execute and deliver such documents as the other may reasonably request to correct or effectuate the purpose of this Contract.

35. COUNTERPARTS AND AUTHORITY.

This Contract may be executed in counterparts all of which, taken together, shall constitute one and the same Contract. Each party represents that the person signing on its behalf has been fully authorized by all required action to sign on behalf of and to bind that party to the obligations stated herein.

36. NOTICE OF CLAIM; WAIVER OF REMEDIES; NO DAMAGES FOR DELAY; DISPUTE RESOLUTION.

36.1 The COUNTY's liability to CONTRACTOR for any claims arising out of or related to the subject matter of this Contract, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the COUNTY of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:

36.1.1 All claims must be submitted as a Request for Change Order in the manner as provided herein;

36.1.2 If the CONTRACTOR claims that any instructions given to it by the Architect/Engineer or by the COUNTY, by drawings or otherwise, involve extra Work not covered by the Contract and not discoverable with a review of the plans and specifications, then, except in emergencies endangering life or property, CONTRACTOR shall give the Architect/Engineer and the COUNTY written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than twenty (20) calendar days after the receipt of such instructions.

36.1.3 The CONTRACTOR must submit a Notice of Claim to the COUNTY and to the Architect/Engineer within twenty (20) days of when the CONTRACTOR was or should have been aware of the occurrence of the event giving rise to the claim; and

36.1.4 Within ten (10) days of submitting its Notice of Claim, the CONTRACTOR shall submit to the COUNTY its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) days from the Notice of Claim the CONTRACTOR shall submit a detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc.

establishing the basis for the amount of the claim.

36.1.5 The CONTRACTOR agrees that the COUNTY shall not be liable for any claim that the CONTRACTOR fails to submit as a Request for Change Order as provided in this section.

36.2 After receipt of a Request for Change Order, the COUNTY, in consultation with the Architect/Engineer, shall deliver to the CONTRACTOR its written determination of the claim. As to disputed matters subject to the determination by final COUNTY action (not actions for breach of contract or tort) the COUNTY'S written decision following compliance with the dispute resolution procedure set forth in Sections 36.4 through 36.6 below shall be final COUNTY action.

36.3 For work the CONTRACTOR performs with its own forces, and in addition to the adjustments provided for in the Guaranteed Maximum Price (G.M.P.) of a Task Order, the CONTRACTOR'S exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the COUNTY or the Architect/Engineer and claims based on breach of contract or negligence, shall be a claim submitted in compliance with Section 36.1 above, for an extension of the scheduled construction time. In the event of a change in such work that will modify the G.M.P., the CONTRACTOR'S claim for adjustment in contract sum are limited exclusively to its actual costs for such changes, including costs involved in claim preparation, plus five percent (5%) overhead, five percent (5%) profit and a two percent (2%) bond in the General Conditions. The CONTRACTOR expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

36.4 In the event of any dispute over a proposed change order or any other matter arising out of the implementation or interpretation of this contract the following dispute resolution process shall apply.

36.4.1 Within three (3) days after denial of a CONTRACTOR'S Change Order or Contract modification request in an amount, individually or in total, less than the authorized purchasing level approved for the County Manager by the County Commission (currently at \$100,000) the CONTRACTOR may submit to the County Manager, or his/her a designee with experience in the oversight of construction projects for a department or business other than the department responsible for monitoring the disputed request, documentation of the CONTRACTOR'S position in the dispute

or disagreement. The County Manager or designee, within five (5) days after the receipt of the CONTRACTOR'S documentation, shall review the request and make a final determination as to whether denial was arbitrary or capricious based upon the sufficiency of the work under the terms of the Contract, applicable regulations and relevant construction standards. Based upon the sufficiency and degree of completion, as well as any defects in the work and the cost/expense reasonably required, if any, to correct or repair defective work, the reviewer shall make the final determination as to whether a written Change Order or Contract modification should be approved by the County Manager.

36.4.2 If the denied request or disputed amount exceeds the County Manager's purchasing authority, the County Manager shall present a report, recommendation and the CONTRACTOR'S claim and documentation, to the County Commission for a final determination within thirty (30) days after receiving the CONTRACTOR'S documentation for the claim. The Commission shall make its decision using the standards specified above.

36.5 Within thirty (30) days after denial of a request for a Change Order or Contract modification by the Project Manager or engineer involving (1) an amount in excess of the County Manager's expenditure authority, or (2) for the amount the CONTRACTOR claims to be due at the time the project is ready for beneficial use or occupation, the COUNTY may, at the COUNTY'S option, in lieu of the procedure specified in Section 36.4, submit the dispute to a mediator with knowledge or experience in construction management, as agreed upon by the parties. Upon referral to a mediator, the COUNTY and CONTRACTOR shall each pay half the estimated cost of the mediator, up front. Within fifteen (15) days after the date of submittal, the mediator, applying the standards set forth in Section 36.4, shall investigate the dispute and submit a written recommendation for disposition of the dispute to the County Manager or a designee with the qualifications specified in Section 36.4. Within fifteen (15) days after receiving the mediator's recommendation, the County Manager shall submit the recommendation to the County Commission, along with a staff report analyzing the dispute and mediator's recommendation. Based on the standards set forth in Section 36.4 above, the Commission shall decide whether to grant or deny, in whole or in part, the amounts recommended by the mediator. The Commission's decision will be deemed final action on the disputed claim for the purposes of ripening the decision for judicial review. If the mediator recommends that no Change Order or Contract modification be granted, the CONTRACTOR shall reimburse the COUNTY for any amounts paid by the COUNTY to the mediator. If the mediator

determines that the Change Order is justified, the COUNTY will pay the CONTRACTOR'S cost for the mediator.

36.6 The deadlines for completing the dispute resolution process described in Sections 36.4 and 36.5 may be extended by mutual agreement of the CONTRACTOR and the COUNTY.

37. PUBLIC CONSTRUCTION BOND.

For projects where the cost will exceed \$100,000.00, in accordance with the provisions of Section 255.05, Florida Statutes, the CONTRACTOR shall provide to the COUNTY, on a form furnished by the COUNTY, certified copies of the recorded Bond in an amount not less than the total construction cost (G.M.P.) as defined in the associated Task Order and inclusive of the construction fee. *The Public Construction Bond shall be recorded (by the CONTRACTOR) in the official record of the COUNTY in which the project is located.* The CONTRACTOR must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

Limits shall not be less than one hundred percent of the total construction cost of a project. Such bonds shall remain in effect at least until one year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Public Construction Bonds, or other form of bond to the COUNTY must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July 30, 1947 (United States Code 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best Rating of "A-" and financial size V or higher.

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IN WITNESS WHEREOF, on the date last signed below, the Parties have caused this Contract to be executed by their duly authorized representatives.

WITNESS:

BREVARD COUNTY, FLORIDA

[Signature]

By: [Signature]
Frank Abbate, County Manager
Date: 11/22/22
As approved by the Board on 08/30/2022

Reviewed for legal form and content for Brevard County:

[Signature]
Deputy County Attorney

W & J CONSTRUCTION CORPORATION

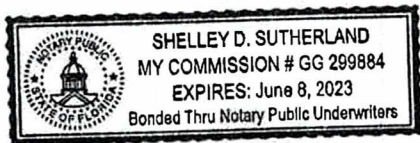
By: [Signature]
Erik B. Costin, Vice President

STATE OF Florida

COUNTY OF Brevard

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 15 day of November, 2022 by Erik B. Costin, Vice President, of W & J CONSTRUCTION CORPORATION, a Florida corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ as identification.

[Notary Seal]



[Signature]
Notary Public Signature
Shelley Sutherland
Name typed, printed or stamped

My Commission Expires: 06/08/2023

**ATTACHMENT A
GENERAL CONDITIONS**

ATTACHMENT A
CONSTRUCTION MANAGER (AT RISK)
GENERAL CONDITIONS

ARTICLE 1
THE CONSTRUCTION TEAM

The Contractor accepts the relationship of trust and confidence established between him and the County by this Contract. The Contractor covenants with the County to furnish the best skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the County. The Contractor agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in the best and soundest way, and in the most expeditious and economical manner consistent with the interest of the County.

- 1.1 The Construction Team - The Contractor, the County, and the Architect/Engineer, called the "Construction Team", shall work jointly through final construction completion and shall be available thereafter should additional services be required. The Architect/Engineer will provide leadership on design-related matters, and the Contractor shall provide leadership to the Construction Team on all matters relating to construction.

The specific representatives of the Construction Team will be identified in the Task Order.

- 1.2 Scope of Work – A general description of the Work/Project to be built/constructed/installed as identified in the Task Order.

- 1.3 Definitions:

Project - The Project is the total work to be performed in the Task Order. Projects may consist of planning, design review, permitting, construction (which includes all labor, equipment, material and supervision) and code inspection necessary to build/construct and complete the Scope of Work.

County - Brevard County, Public Works Department - Facilities, 2725 Judge Fran Jamieson Way, Building A, 2nd Floor, Room 201, Viera, Florida 32940, (321) 617-7202. The County may also include the County Manager or the Project Director with regard to the performance of designated functions and duties specified for each under the terms and provisions of this Contract. All communications directed to the County shall be directed to the Project Director and Construction Coordinator.

Contract Documents – Refer to Section 5 of the COUNTY-CONTRACTOR Contract.

Permitting Authority - All applicable Federal, State, County and local agencies responsible for permitting and code inspections on projects administered by the County.

Construction Manager or Contractor– To be identified in the Task Order.

Architect/Engineer – To be identified in the Task Order.

Project Director - To be identified in the Task Order.

County's Representatives - The Project Director and his/her supervisors and/or designees.

Estimate - The Contractor's latest estimate of probable Project construction cost.

Guaranteed Maximum Price (G.M.P.) - The Guaranteed Maximum Price for the construction of the Project, which shall be subject to adjustments only as provided herein. G.M.P. includes Cost of the Work and Contractor's fee for Construction Phase services. The Guaranteed Maximum Price includes the cost for County direct purchases; however, all County direct purchases and applicable sales tax will be deducted on a monthly basis via change order in accordance with **Attachment "A"** (Direct Purchasing Procedure).

Substantial Completion - The point in the construction where all essential elements of the Project are sufficiently complete in conformance with the Contract Documents, that the County has both the occupancy of the Project, as evidenced by a Certificate of Occupancy issued by the governmental authority with jurisdiction and the beneficial use of the Project for its intended purpose where only minor punch list items are required for final completion. Substantial Completion shall not be deemed to have occurred where 1) latent defects are revealed subsequent to use and occupation of the Project by the County; or 2) where the scope of substantial defects in workmanship or materials are not readily observable or discoverable when use and occupancy of the Project commenced; or 3) the failure to meet grant specifications, if any.

Final Completion – The date noticed by the County, in its sole discretion, upon which all of the following activities have occurred: conditions and requirements of any and all permits and regulatory agencies have been satisfied; and the Work has been fully completed in compliance with the terms and conditions of the Contract Documents.

Drawings and Specifications or Plans and Specifications – The official approved drawings or plans and specifications, or exact reproductions thereof, which show the location, character, dimensions and details of the work to be done for a Project, which are incorporated by reference as part of the Contract

Documents.

Extent of Contract and Recitals - This Contract for Construction Management between the County and the Contractor supersedes any prior negotiations, representations or contracts. The drawings, specifications and other descriptive documents, as identified by index, defining the work to be included under this Contract shall be identified in the applicable Task Order. The Contractor shall obtain from the County signed, sealed and dated drawings, specifications and other documents upon which the G.M.P. is based.

ARTICLE 2 CONTRACTOR'S RESPONSIBILITIES

Contractor shall perform all services described in this Article, as applicable to the Task Order. The services to be provided under Paragraph 2.1 constitute the Pre-Construction Phase services. The services to be provided under Paragraph 2.2 thru 2.9 constitute the Construction Phase services. The necessity of the Pre-Construction Phase services shall be determined by the County per Project.

2.1 PRE-CONSTRUCTION PHASE

2.1.1 Preliminary Evaluation – At the request of the County, Construction Manager may provide a preliminary evaluation of the County's Project.

2.1.2 Consultation - Construction Manager may be required to provide Design Disciplines, Construction Documents, and Plans and Specifications review at all design milestones and a final constructability review. The review at each milestone will identify areas of omission, overlapping and identify documents to be modified in order to clarify the construction details. The review will also include the coordination and interface of the Contract Document's General Conditions, Special Conditions, trade contractor bid packages and site utilization planning during construction. As part of the design review, Construction Manager will provide Value Engineering and construction alternatives, identifying to the County and Architect/Engineer options for systems and components that are cost-effective, efficient, and easy to maintain.

Construction Manager, with Architect/Engineer, will schedule and attend, and will continue to jointly schedule and attend, weekly progress meetings (or as determined by the Project Director or Project Manager) with County and Architect/Engineer. Construction Manager has and will continue to consult with County and Architect/Engineer regarding site use and improvements, and the selection of materials, building systems and equipment. Construction Manager has provided and will continue to provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction

completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

- 2.1.3 Preliminary Construction Schedule - Contractor shall prepare a Preliminary Construction Schedule, a copy of which shall be included in the Task Order. Contractor shall coordinate and integrate the Preliminary Construction Schedule with the services and activities of County, Architect/Engineer and Contractor. The Contractor shall provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Contractor's work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Contract Time as defined in Subparagraph 2.3.3 below. The schedule shall include all phases of construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance of testing requirements. The Contractor shall advise the County, its representatives and the Architect/Engineer of their required participation in any meeting or inspection giving each at least one (1) week notice unless such notice is made impossible by conditions beyond the Contractor's control. The Contractor shall hold jobsite meetings at least once each week with the Construction Team and at least once each week with the subcontractors and the Architect/Engineer field representatives, and County or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.
- 2.1.4 Subcontractors and Suppliers – The Contractor shall continue to develop subcontractor interest in the Project and shall furnish to County and Architect/Engineer for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design and within the timeframes established in the Task Order , from whom proposals will be requested for each principal portion of the Project. County will promptly reply in writing to the Contractor if County has an objection to any such subcontractor or supplier. The receipt of such list shall not require County to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the rights of County to later object to or reject any proposed subcontractor or supplier. The Contractor shall be responsible for ensuring any contractor(s) and subcontractor(s) meet any and all specifications outlined in this Contract, or as amended or modified, including, but not limited to, the timeframes established in the Construction Schedule.
- 2.1.5 Long Lead and County Direct Procurement - The Construction Manager shall review the design for the purpose of identifying long lead and County direct procurement items (machinery, equipment, materials and supplies). When each item is identified the Contractor shall notify the subcontractors, the Project Director, and the County of the required procurement and schedule. Such

information shall be included in the bid documents and made a part of all affected subcontracts. As soon as the Architect/Engineer has completed drawings and technical specifications and the Contractor has obtained permitting approval, the Contractor shall prepare Invitation for Bids. The Contractor shall keep informed of the progress of the respective subcontractors and/or suppliers, manufacturing or fabricating such items and notify the Project Director, County and Architect/Engineer of any problems or prospective delay in delivery. The Contractor shall ensure that any subcontractor adheres to the Construction Schedule. The Contractor has reviewed the Project plans for the purpose of identifying long lead and County direct procurement items (machinery, equipment, materials and supplies). The Contractor shall keep informed of the progress of the respective subcontractors and/or suppliers, manufacturing or fabricating such items and notify the Project Director, County and Architect/Engineer of any problems or prospective delay in delivery.

- 2.1.6 Extent of Responsibility - The recommendations and advice of Contractor concerning design alternatives shall be subject to the review and approval of County and County's Architect/Engineer. The Contractor shall be responsible for complying with all applicable laws, statutes, ordinances, building codes, rules and regulations. If the Contractor recognizes that portions of the Drawings and Specifications are at variance therewith, the Contractor shall promptly notify County and Architect/Engineer in writing. It is not Contractor's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Contractor recognizes that portions of the Drawings and Specifications are at variance therewith, Contractor shall promptly notify County and Architect/Engineer in writing.
- 2.1.7 Equal Employment Opportunity and Affirmative Action – The Contractor shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.
- 2.1.8 Separate Contracts Planning - The Contractor shall review the design with the Architect/Engineer and make recommendations to the County and to the Architect/Engineer with respect to dividing the work in such manner as will permit the Contractor to take bids and award separate construction subcontracts on the current schedule. The Contractor shall take into consideration such factors as natural and practical lines of severability, sequencing, effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the County.

2.2 CONSTRUCTION PHASE

2.2.1 Interfacing -

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

- B. Subcontractor Interfacing - The Contractor shall be the single point of interface with all Subcontractors for the County, and all of its agents and representatives, including the Architect/Engineer. The Contractor shall negotiate all change orders, field orders and request for proposals, with all affected Subcontractors and shall review the costs of those proposals and advise the County and Architect/Engineer of their validity and reasonableness, acting in the County's best interest prior to requesting approval of each change order from the County before any work is begun on any change order, an executed Change Order from the County must be issued. However, when health and safety are threatened, the Contractor shall act immediately to remove the threat to health and safety. The Contractor shall also carefully review all shop drawings and then forward the same to the Architect/Engineer for review and actions. The Architect/Engineer will transmit them back to the Contractor who will then issue the shop drawings to the affected Subcontractor for fabrication or revision. The Contractor shall maintain a suspense control system to promote expeditious handling. The Contractor shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of the Contractor by the Subcontractors and shall maintain a suspense control system to promote timely response. The Contractor shall advise the Project Director and Architect/Engineer when timely response is not occurring on any of the above.

2.2.2 Solicitation of Bids

- A. Without assuming responsibilities of the Architect/Engineer, the Contractor shall prepare Invitations for Bid (or Requests For Proposal, when applicable) for all procurements of long lead times, materials and services for Subcontractor contracts and for site utilities.

- B. As part of such preparation, the Contractor shall review the specifications and drawings prepared by the Architect/Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally

restrictive requirements, and any other defects in the specifications or in the drawings noted by the Contractor shall be brought to the attention of the Project Director and Architect/Engineer in written form.

- C. For each separate subcontractor or construction trade contract used in the Project, the Contractor shall, unless waived by the County, conduct a pre-bid conference with prospective bidders, the Architect/Engineer and Project Director. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Contractor shall transmit these to the Architect/Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.
- D. In accordance with Article 2.5.1 the Contractor shall open and review all bids and enter into contract(s) with those low bidders determined to be most qualified by the Contractor. The Contractor shall make every effort to follow the County's Pre- Qualification Ordinance 98-37, and as updated, (**Attachment "B"**) for applicable subcontract trades.

2.2.3 Bond – If the Project's cost is \$100,000.00 or more, in accordance with the provisions of Section 255.05, Florida Statutes, the Contractor shall provide to the County, on the form furnished by the County (**Attachment "C" Public Construction Bond**), a certified copy of the recorded Bond in an amount not less than the total construction cost (G.M.P.) as defined in Article 9 and inclusive of the construction fee. *The Public Construction Bond shall be recorded (by the Contractor) in the official record of the County in which the project is located.* The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

2.2.4 Quality Control - The Contractor shall develop and maintain a program, acceptable to the County and Architect/Engineer, to assure quality control of the construction (*this may include personnel if approved by the County*). The Contractor shall have a qualified and competent Superintendent to supervise the work of all Subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and shall continue to exert influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Contractor and Architect/Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the County shall be the final judge of performance and acceptability.

2.3 Guaranteed Maximum Price (G.M.P.) and Contract Time

- 2.3.1 Contractor shall acknowledge and agree the Drawings and Specifications are complete for the Contractor to propose a Guaranteed Maximum Price (G.M.P.), which is the total not to exceed sum of the Contractor's Fee and the Cost of the Project. The G.M.P. shall be established in the Task Order.
- 2.3.2 The Cost of the Work shall include Contractor's contingency, a sum agreed to by all parties for the Contractor's use to cover costs arising from unforeseen conditions in the Project, as further defined by Contractor's final approved G.M.P. Contractor's contingency shall be established as a separate line item within the G.M.P.
- 2.3.3 Basis of Guaranteed Maximum Price (G.M.P.)
The G.M.P. shall be based upon the following:
- A. The list of the Drawings and Specifications, including all revisions thereto, and the Contract Documents.
 - B. The list of clarifications and assumptions made by Contractor in the preparation of its G.M.P. proposal to supplement the information contained in the Drawings and Specifications as listed in Contractor's G.M.P.
 - C. The Preliminary Construction Schedule . As reflected in said Schedule, the Contractor is to achieve Substantial Completion and Final Completion of the Work as identified in the Task Order.
- 2.3.4 Included within the G.M.P. is the Contractor's Fee. The Contractor's Fee shall be established in the Task Order. The sum of the Cost of the Project and the Contractor's Fee shall not exceed the G.M.P. The Contractor's Fee shall constitute Contractor's total compensation for profit. All costs in excess of the final approved G.M.P. (as adjusted by County direct purchases, if any, in accordance with **Attachment "A"**) are the responsibility of the Contractor. Any savings between the G.M.P. (as adjusted for County direct purchases) and the sum of the actual cost of the Project including Contract Documents, will be returned to the County.
- 2.3.5 Prior to issuance of the Construction Phase Notice to Proceed, Contractor shall not incur any costs to be reimbursed as part of the Cost of the Project, except as County may specifically authorize in writing.
- 2.3.6 The G.M.P. and date of Substantial Completion shall be subject to additions and deductions by a Change Order as provided in the Contract Documents.
- 2.3.7 The G.M.P. shall include in the Cost of the Project only those taxes which are enacted and in effect at the time the G.M.P. was determined.

2.4 Construction Phase

2.4.1 General

- A. The Construction Phase shall commence on the date identified in the Notice to Proceed to be issued by the County.
- B. The Contractor shall cause all Work required by the Task Order to be properly completed in accordance with the terms of the Contract Documents and within the Project's Contract Time.

2.4.2 Contractor's Staff - The Contractor shall maintain sufficient off-site support staff, and competent full-time staff, including, but not limited to a qualified and competent superintendent, at the Project site authorized to act on behalf of the Contractor and to coordinate, inspect and provide general direction of the work and progress of the subcontractors, and the Contractor shall provide no less than those personnel during the respective phases of construction. The Contractor shall not change any of those designated persons unless mutually agreed to by the County and Contractor. In such case, the County shall have the right of approval of the qualifications of replacement personnel. Such approval will not be reasonably withheld.

- A. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor.
- B. The superintendent shall be in attendance at the Project site not less than eight (8) hours per day, five (5) days per week, and any time work is being performed at the jobsite, unless the job is closed down due to a general strike or conditions beyond the control of the Contractor, or during holidays or when no work is being performed at the jobsite, or until completion or termination of the Task Order unless agreed to by the County based on the size and complexity of the Project. It is understood that such superintendent shall be acceptable to the County and the Architect/Engineer and shall be the one who will be continued in that capacity for the duration of the Project, unless the County otherwise agrees. The superintendent shall not be employed on any other project for or by Contractor or any other entity during the course of the work unless agreed to by the County based on the size and complexity of the Project.

2.4.3 Lines of Authority - The Contractor shall establish and maintain lines of authority for its personnel, and shall provide this description/definition to the County and all

other affected parties such as the code inspectors of the permitting authorities, the subcontractors, and the Architect/Engineer, to provide general direction of the work and progress of the various phases and subcontractors. The County and the Architect/Engineer may attend meetings between the Contractor and subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Contractor to administer the subcontractor.

2.5 Administration

- 2.5.1 Those portions of the Project that Contractor does not customarily perform with Contractor's own personnel shall be performed under subcontracts or by other appropriate written contracts with Contractor. Contractor shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Project from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the County and Architect/Engineer for review and comment. Based upon that review and comment, Contractor shall then determine, subject to the reasonable objection of Architect/Engineer or County, which bids will be accepted. Contractor shall not be required to contract with anyone to whom Contractor has reasonable objection. Notwithstanding anything herein to the contrary, Contractor covenants and agrees that it shall competitively bid all subcontracts. Further, with respect to all such subcontracts, Contractor covenants and agrees that it shall select and contract with the lowest, responsive and qualified bidder, unless otherwise consented to in writing by County.
- 2.5.2 Subcontracts and contracts with suppliers furnishing materials or equipment fabricated to a special design shall conform with payment provisions and shall not be awarded on the basis of cost plus a fee without prior written consent of County.
- 2.5.3 Contractor shall schedule and conduct weekly meetings at which County, Architect/Engineer, Contractor and appropriate Subcontractors can discuss the status of the Project. Contractor shall prepare and promptly distribute type-written meeting minutes within two (2) business days after any such meeting is held. Promptly after County's issuance of the Notice to Proceed, Contractor shall prepare a more detailed project schedule, known as the Critical Path Method (CPM) Schedule based upon the Preliminary Construction Schedule, including County's occupancy requirements. Contractor will submit monthly updates to the CPM Schedule until the Project is completed.
- 2.5.4 Contractor shall provide Monthly Written Reports to County on the progress of the entire Work. Contractor shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as County may require. The log shall be available to County at all times.

- 2.6 Professional Services - Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Task Order for a portion of the Project, or unless Contractor has specifically agreed in writing to provide such services. In such event, Contractor shall cause such services to be performed by appropriately licensed professionals.
- 2.7 Unsafe Materials - If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created or brought on the site Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to County and Architect/Engineer in writing. County shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

In accordance with Florida Statute 255.40, the County will require that the Contractor certify (at Substantial Completion) that to the best of his/her knowledge and ability no asbestos-containing materials and/or supplies have been purchased and/or installed on this Project.

(Florida Statute 255.40 Use of asbestos in new public buildings or buildings newly constructed for lease to governmental agencies; prohibition - The use of asbestos or asbestos-based fiber materials is prohibited in any building, construction of which is commenced after September 30, 1983, which is financed with public funds or is constructed for the express purpose of being leased to any governmental entity.)

- 2.8 Weather Protection - The Contractor will be responsible to ascertain what temporary enclosures, if any, of building areas should be provided for and implemented as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. It is the Contractor's responsibility to secure the work site. All costs associated with this shall be the responsibility of the Contractor, provided such costs are within the G.M.P.
- 2.9 Job Site Requirements
- (1) The Contractor shall provide for each of the following activities as a part of the Contractor's Construction Phase services:
- a. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc. and require the same of

subcontractors

- b. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
- c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
- d. Provide labor relations management for a harmonious, productive Project.
- e. Provide a safety program for the Project to meet OSHA requirements. Monitor for Subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
- f. Provide a quality control program.
- g. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.
- h. All requirements of regulatory agencies.

2.10 Job Site Administration - The Contractor shall provide as part of the Contractor's Construction Phase services, administrative functions during construction, including but not limited to, the following:

- A. Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocations, etc. Review and coordinate each Subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements.

Use the job site meeting as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand. Identify party or parties responsible for follow-up on any problems, delay items or questions and document and implement the course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.

- B. Shop Drawing Submittals/Approvals - Check Shop Drawings and implement procedures for submittal and transmittal to the Architect/Engineer of such drawings for action, and closely monitor their submittal and approval process. Provide copy of all correspondence to County. Contractor will provide one (1) approved Submittal or Shop Drawing to County.

- C. Material and Equipment Expediting - Closely monitor material and equipment deliveries; implement inspection and follow-up procedures on commitments of all Suppliers and Subcontractors.
- D. Payments to Subcontractor - Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments.
- E. Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect/Engineer to the Architect/Engineer as a Request for Information (R.F.I.).
- F. Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the County and the Architect/Engineer including information on the Subcontractor's work, and the percentage of completion. Keep a daily log available to the County, the Architect/Engineer and the Permitting Authority inspectors.
- G. Substantial Completion - The Contractor shall secure the Certificate of Occupancy and notify the County and Architect/Engineer, in writing, that the Project will be ready for inspection to determine if it is substantially complete and ready for inspection on or after a specific date, which date shall be stated in the notice. The notice shall be given at least seven (7) calendar days in advance of said date. Inspection and testing shall take place at time(s) mutually agreeable to the Contractor, Architect/Engineer and County. The inspection will be conducted jointly between the Architect/Engineer, County and Contractor's representative. The inspection shall determine if substantial completion has been accomplished and the Architect/Engineer shall produce a Certificate of Substantial Completion (AIA Document G704, as may be amended) and a written list of unfinished Work and defective work, commonly referred to as a "Punch List", which must be finished and corrected to obtain Final Completion. Should Certificate of Occupancy not be able to be obtained through no fault of Contractor, an adjustment to the Task Order shall be provided in accordance with the terms of the Contract Documents.

At the County's option a specific area or segment of the Project may be inspected and/or determined substantially complete.

- H. Final Completion - The Contractor shall notify the Architect/Engineer and County, in writing, that the Project will be ready for final inspection on or after a specific date, which date shall be stated in the notice. This notice shall be given at least seven (7) calendar days in advance. That inspection and any necessary testing shall be conducted in the same

manner as the inspection for Substantial Completion. When the Project is finally and totally complete, including, but not limited to, the elimination of all defects, a Certificate of Final Completion will be issued on the County form, attached as Attachment "E", by the Architect/Engineer and the Project shall be submitted to the County for final acceptance. The County and Architect/Engineer shall conduct the inspections. The County may elect to have other persons of its choosing also participate in the inspections. If one or more re-inspections are required, the Contractor shall reimburse the County for all costs of re-inspection or, at the County's option, the costs may be deducted from payments due to the Contractor. The Total Project Schedule shall include these notices and inspections as activities.

The Contractor shall secure and transmit to the Architect/Engineer all required guarantees, affidavits, releases, bonds and waivers, manuals, "As-Built" Drawings, and maintenance books as part of Final Completion (in triplicate in a format suitable to the County) unless stated otherwise in the Project specifications.

- I. Start-Up - With the County's personnel present, the Contractor shall checkout utilities, operations, systems, and equipment for readiness and perform initial start-up and testing.
- J. As-Built Drawings - The Contractor shall monitor the progress of Work on marked-up field prints which, at Substantial Completion, shall be submitted to the County as Final "As-Built" Drawings.
- K. Administrative Records - The Contractor will maintain at the job site on a current basis, files and records such as, but not limited to the following:
 - 1. Contracts and Purchase Orders
 - 2. Shop Drawing Submittal/Approval
 - 3. Logs Equipment
 - 4. Purchase/Delivery Logs
 - 5. Drawings and Specifications with Revisions
 - 6. Cost Proposal Requests
 - 7. Meeting Minutes
 - 8. Lab Test Reports
 - 9. Change Orders
 - 10. Material Purchase Delivery Logs
 - 11. "As-Built" Marked Prints
 - 12. Monthly Progress Reports
 - 13. Correspondence
 - 14. Files Transmittal Records
 - 15. Inspection Reports

16. Punch Lists
17. Requests for Information (R.F.I.s)
18. Architect Supplement Instructions (A.S.I.s)

The Project records shall be available at all times to the County and Architect/Engineer for reference or review.

L. County Occupancy:

The Contractor shall provide services during the Construction Phase which will provide a smooth and successful County occupancy of the Project. The Contractor shall provide management to facilitate County occupancy and provide transitional services to get the work "on line" in such conditions as will satisfy County operational requirements.

The Contractor shall conduct the Contractor's preliminary punch list inspection and coordinate the completion of all punch list work to be done with County occupancy requirements in mind.

The Contractor shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the County in such a manner as to promote their usability in a format compatible with County systems. The Contractor shall provide operational training, in equipment use, for building operators to a maximum of eight (8) hours.

The Contractor shall secure required guarantees and warranties, assembled and organized and deliver same, in a format compatible with County systems, to the County in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

The Contractor shall continuously review "As-Built" Drawings and mark-up progress prints to provide as much accuracy as possible.

- M. Warranty - Where any work is performed by the Contractor's own forces or by Subcontractors under contract with the Contractor, the Contractor shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the same Work, the Contractor further agrees to correct all work found by the County to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one (1) year from the Date of Final Completion or as may be set forth with respect to specific warranties

contained in the trade sections of the Specifications. The Contractor shall collect and deliver to the County any specific written warranties given by others as required by the Contract Documents. **Also, the Contractor shall conduct, jointly with the County and the Architect/Engineer, a warranty inspection nine (9) months after the date of County Occupancy. This warranty inspection will be scheduled by a representative of the County.**

ARTICLE 3
COUNTY'S RESPONSIBILITIES

- 3.1 County's Information - The County shall provide full information regarding County's requirements for the Project.
- 3.2 County's Representative/Project Director - The County shall designate a representative who shall be fully acquainted with the Project and shall define the lines of County authority to approve Project Construction Budgets, and changes in Project. The County's representative shall render decisions promptly and furnish information expeditiously.
- 3.3 Architect/ Engineer's Contract - The County may retain an Architect/Engineer for design and preparation of construction documents for a Project. The Architect/Engineer's services, duties and responsibilities are described in the Contract between the County and the Architect/Engineer, a copy of which will be furnished to the Contractor upon request.
- 3.4 Approvals and Easements - The County shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.5 Legal Services - The County shall furnish such legal services as may be necessary for providing the items set forth in Article 3 and such auditing services as the County may require.
- 3.6 Drawings and Specifications - The County will provide to the Contractor a reproducible set of all drawings and specifications reasonably necessary and ready for printing.
- 3.7 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the County's expense, and the Contractor shall be entitled to rely upon the accuracy and completeness thereof, unless included as a requirement of the G.M.P.

- 3.8 Project Fault or Defects - If the County becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, the County shall give prompt written notice thereof to the Contractor and Architect/Engineer.
- 3.9 Funding - The County shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Contractor that sufficient funds will be available and committed for the cost of each part of the Project.
- 3.10 Lines of Communication - The County and Architect/Engineer shall communicate with the Subcontractors or Suppliers only through the Contractor while such method of communication is effective in maintaining Project schedules and quality.
- 3.11 Lines of Authority - The County shall establish and maintain lines of authority for County's personnel and shall provide this delineation to the Contractor and all other affected parties.
- 3.12 Permitting & Code Inspections - The County recognizes and coordinates with the Permitting Authority and expects the Contractor to do the same.

ARTICLE 4
PERMITTING AND INSPECTION

- 4.1 Permits, Fees and Notices - Unless otherwise provided in the Task Order, the Contractor shall secure and the County shall pay for any Brevard County building permit or other County permits, fees, and licenses necessary for proper execution of the Project and which are legally required. Unless already secured and paid for by the County, any other entity/jurisdiction permits shall be included in the G.M.P. and secured and paid for by the Contractor. County Impact and Solid Waste fees will be paid by the County. Copies of all permits shall be submitted to the County.
- 4.2 The Contractor shall comply with and give notices required by laws, ordinances, rules and regulations and lawful orders of public authorities bearing on performance of the work required for the Project.
- 4.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, and such variance was not discoverable during the Contractor's review of these documents for the purpose of determining the G.M.P., the Contractor shall promptly notify the Architect and County, in writing, and necessary changes shall be accomplished by appropriate modification.

- 4.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect/Engineer and County, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

ARTICLE 5
SUBCONTRACTS

- 5.1 Definition - A Subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the work. Nothing contained in the Contract Documents shall create any contractual relation between the County or Architect/Engineer and any Subcontractor.
- 5.2 Bids/Proposals - The Contractor has made every attempt to receive, at a minimum, three (3) bids/proposals from Subcontractors and Suppliers and will award those contracts to the lowest, responsive, and responsible bidder.
- 5.3 Required Subcontractor and Subcontract Conditions.
- 5.3.1 Subcontractual Relations - By an appropriate written contract, the Contractor shall require each Subcontractor to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor by this Contract, assumes toward the County and the Architect/Engineer. Said contracts shall preserve and protect the rights of the County and Architect/Engineer under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar contracts with his Subcontractor's Subcontractor.

The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Article 5 and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractor.

- A. Subcontractors must submit a complete pre-qualification form demonstrating their work experience, financial condition, and adherence to schedule. The Subcontractors financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.

B. Workforce - The Subcontractor shall attempt to perform no less than fifty (50%) percent of the Project construction work utilizing its own forces.

C. **All subcontracts shall provide:**

1. **LIMITATION OF REMEDY - NO DAMAGES FOR DELAY**
That the Subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the County or Architect/Engineer or attributable to the County or Architect/Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual cost for such change, plus, no more than five percent (5%) for profit, and five percent (5%) for overhead.

The subcontract shall require the Subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, loss or additional compensation.

2. Each subcontract shall require that any claims by Subcontractor for delays or additional cost must be submitted to Contractor within the time and in the manner in which the Contractor must submit such claims to the County, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

5.4 Responsibilities for Acts and Omissions - The Contractor shall be responsible to the County for the acts and omissions of its employees and agents and its Subcontractors, agents and employees, and all other persons performing any of the work or supplying materials under this contract to the Contractor.

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

6.1 The Project Substantial Completion Date and Project Final Completion Date for completion of the Project in accordance with the Contract Documents are established by the Construction Team and reflected in the Notice to Proceed issued by the County. The Contractor acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the County.
TIME IS OF THE ESSENCE WITH RESPECT TO THIS CONTRACT AND RESULTING

TASK ORDERS.

It is specifically agreed by and between the parties that the County may deduct a sum in the amount scheduled below from the amount of compensation to be paid the Contractor, Sundays and Holidays included, that the Project remains uncompleted. This amount as scheduled and agreed upon as a proper measure of liquidated damages, which the County will sustain per day by failure of the Contractor to complete the Project by the time stipulated in the Task Order, is not to be construed in any sense as a penalty provision.

Project Substantial Completion	\$TBD per day
Project Final Completion	\$TBD per day

Liquidated Damages will be assessed for each day beyond the contracted Project Substantial Completion Date, or any authorized extension thereof by Change Order, until actual project Substantial Completion is achieved. From the date of Substantial Completion, the Contractor shall be granted a certain period of time, no less than thirty (30) calendar days, as stipulated in the Task Order, for completion of punch list items, associated inspections and approvals, and submission and approval of required closeout documentation, at which time Final Completion shall be obtained. If Final Completion is not obtained within the period of time as identified in the Task Order, or any authorized extension thereof by Change Order, then the above-listed liquidated damages will be assessed for each day beyond the date of Final Completion.

- 6.2 The date of County Occupancy shall be considered the date the Certificate of Occupancy is secured. Warranties called for by the Contract Documents or by the Drawings and Specifications shall commence on the Date of Final Completion of the Project, unless specified otherwise in the Project Specifications.

ARTICLE 7 GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 7.1 The Contractor's written Guaranteed Maximum Price (G.M.P.) guarantees the maximum price to the County for the construction cost of the Project or designated part thereof, based on a review of the drawings and specifications. Such G.M.P. will be subject to increase or deduction for changes in the Project as provided in Article 10 and for County direct purchases, if any, in accordance with **Attachment "A"**. All costs in excess of the G.M.P., as adjusted up or down in accordance with the terms of the Contract Document, are the responsibility of the Contractor. Any savings between the G.M.P., as adjusted, and the sum of the actual cost of the Project plus the Contractor's fees, will be returned to the County per Article 2.3.4. The G.M.P. includes all taxes in the cost of the Project which were legally enacted and in effect at the time the G.M.P. was established.

- 7.2 County-Direct Purchases - In the event the County opts to make County Direct Purchases, as outlined in **Attachment "A"**, the G.M.P. shall be adjusted by the cost of the materials and the applicable sales tax so that all sales tax savings accrue to the benefit of the County. The Contractor shall diligently process all County Direct Purchase invoices for the Project in order for the County to benefit from applicable vendor discounts. The Contractor will endeavor to submit all invoices to County in sufficient amount of time in order for the Project to benefit from the vendor discount.
- 7.3 The Contractor will verify the time schedule for activities and work which will be adopted by the Construction Team and used to determine the Contractor's cost of work. Surplus funds from bids received below the applicable line items, including line items within the General Conditions, in the G.M.P. will be set aside for contingency. If bids are received above the applicable line item in the G.M.P., the deficiency will be taken from the contingency via an approved Authorization to Initiate Work/G.M.P. Realignment form; however, such events shall not be cause to increase the G.M.P.

Construction contingency funds will be used for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Contractor will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the County. Documentation for use of the Contingency shall be determined by the Construction Team. The Architect/Engineer and County shall verify and approve the actual costs. If bids are not received for a portion of the work at or below the applicable line item amount in the G.M.P., the Contractor reserves the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

ARTICLE 8 CONTRACTOR'S FEE

- 8.1 In consideration of the performance of the Task Order, the County agrees to pay the Contractor as compensation for his services fees as set forth below.
- 8.1.1 Construction Phase Fee - Prior to commencement of the Construction Phase, the County will direct the Contractor in writing to proceed into the Construction Phase. The County retains the right to review the need and effectiveness of any employee or employees assigned by the Contractor, should the Project Director question the need for the employee or employees. A percentage of the agreed upon Construction Phase Fee shall be paid monthly based on percentage of work completed, less retainage, in accordance with subsection 12.1 below. The Contractor's first monthly

Certificate for Payment shall be submitted no earlier than thirty (30) days following the issuance of the Notice to Proceed, and the final monthly payment shall be paid only when construction of the Project is finally completed, all original final release of liens are received, closeout documentation has been submitted and the Project can be accepted by the County. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the County.

- A. Adjustments in Fee - For changes in the Project as provided in Article 10, the Construction Phase fee shall be adjusted as follows:
1. The Contractor shall be paid an additional fee subject to negotiation if the Contractor is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Contractor, subcontractors or others for whose acts the Contractor is responsible.
- B. Costs and Expenses Included in Contractor's Construction Phase Fee - The following are included in the Contractor's fee for services during the Construction Phase and are included in the G.M.P. associated with the Contractor's Construction Phase Fee referenced herein:
1. Corporate costs including expenses and overhead and profit related to this project by the Contractor's principal and branch offices.
 2. Costs of all data processing, accounting, purchasing and associated staff which is performed at the home office.
 3. General operating expenses incurred in the management and supervision of the Project, to include but not limited to, project managers, assistant project managers, engineers, in-house clerical staff, etc., except as expressly included in Article 9.
 4. Salaries or other compensation of the Contractor's employees at his principal and branch offices.
 5. Relocation expenses for Contractor's personnel.
 6. Project management travel associated with 8.1.1.B.3 above, vehicle-related.

8.1.2 The Contractor's G.M.P. guarantees the maximum price to the County, for the construction cost of the Project or designated part thereof, based on the Contractor's review of the drawings and specifications. Such G.M.P. will be subject to modification for changes in the Project as provided in Article 10. However, the actual price paid for the Work by the County shall be the lesser of:

- A. the Cost of the Project as defined in Article 9, plus the Contractor's

- fees; or
- B. the G.M.P. when the Work is complete. All costs in excess of the final approved G.M.P. are the responsibility of the Contractor.

ARTICLE 9
COST OF THE PROJECT

- 9.1 Definition - The term Cost of the Project shall mean costs reasonably and necessarily incurred in the Project during the Construction Phase for construction services and paid by the Contractor which are included in the Construction Phase Fee, less County direct purchases made in accordance with **Attachment "A"** upon completion of the Project. Such costs shall include the items set forth below in this Article and shall also include those items set forth in as Direct Cost Items and shall be identified in the Task Order.

The County agrees to pay the Contractor for the Cost of the Project subject to the limits set forth in Sections 9.2 and 9.3 plus the Contractor's fees stipulated in Article 8, provided the total does not exceed the G.M.P.

- 9.2 Direct Cost Items ("Allowable General Conditions"), as approved by the County.

- A. Labor wages paid for the on-site personnel directly responsible for the operation and supervision of the Project (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project management) in the direct employ of the Contractor in the performance of the Contractor's work under this Contract, acceptable salary or wage schedules and such fringe benefits, if any, as may be payable with respect thereto (labor burden not to exceed 40% for payroll and 15% for per diem).
- B. Jobsite-related costs, to include but not limited to, jobsite trailer, utilities, trash removal, temporary fence, etc. Items of a direct cost to the Project.
- C. Payments due to Subcontractors from the Contractor or made by the Contractor to Subcontractors for their work performed pursuant to contract under a Task Order.
- D. Cost of the premiums for insurance and cost of premiums for bonds which the Contractor is required to procure by this Contract specifically for the construction of a Project.
- E. Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, and for which the

Contractor is liable.

- F. If approved by the County, the Contractor, when qualified, may self-perform all or a portion of the work for any item listed on the estimate or G.M.P. breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.
- G. Legal costs reasonably and properly resulting from prosecution of the Project for the County, including handling claims for changes by subcontractors and vendors, subject to the following limitations:
 - (a) The County approved incurring such costs in advance, which approval shall not be unreasonably denied; and
 - (b) The legal costs were not incurred as result of the Contractor's own negligence or default.
- H. Costs for such temporary facilities during construction, as approved by the County, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
- I. No costs shall be paid by the County to the Contractor for any expenses related to negligent, intentional, or willful acts or omissions by the Contractor, including any of its subcontractors, employees, or agents, to correct defective workmanship, to correct any work not in conformance with the Drawings and Specifications, or to correct any deficiency or damage.
- J. Vehicle-related expenses for the superintendent.

9.3 Allowances

Within the G.M.P., there may be specific items which the Contractor and County have agreed to include as allowances in the estimates until such time as the cost and schedule impact of these items can be more specifically ascertained. At the time that the Costs of the Work of allowance items becomes known (either through a subcontract price or by virtue of either (A) scope of work and cost agreed to by Contractor and County or (B) an actual buyout of the item), the G.M.P. and Project Completion Dates will be adjusted (either increased or decreased) by the actual Costs of the Work and schedule impact of the item. With respect to increases and decreases to the amount of an allowance item, Contractor shall be entitled to the Contractor's fee, subject to the limits set forth in Article 8, on the adjusted amount of such allowance, and the G.M.P. shall be adjusted by reason thereof, by Change Order. Allowances must be agreed to by both parties. Allowances included within the G.M.P. constitute approval of said allowances at the time the G.M.P. is approved.

ARTICLE 10

CHANGES IN THE PROJECT

10.1 Change Orders - The County, without invalidating the Contract Documents, may order changes in the Project within the general scope of this Contract consisting of additions, deletions or other revisions which may cause an increase or decrease in the G.M.P., and/or the Project Completion Dates. All changes in the Project G.M.P. or Project Completion Dates not covered by an authorized contingency, as described in Article 7.3 must be authorized by a written Change Order or Construction Change Directive, and signed by the County, Architect/Engineer and Contractor before the change is implemented. It shall be the County's discretion as to whether each change order requires the Architect/Engineer's signature. **Maximum allowable mark-up on any change order above the G.M.P. for the Contractor is 5% Profit, 5% Overhead, and a 2% Bond.**

10.1.1 A Construction Change Directive is a change directive signed by the County individual delegated authority pursuant to Brevard County Policy 27, IV.B,C, dated December 17, 2019, and as updated, which is incorporated herein by reference, directing an addition, deletion, or revision in the scope of work and/or schedule. The Construction Change Directive is necessary when no agreement exists among the Architect/Engineer of record, County and the Contractor on the dollar amount of a necessary change in the scope of work and/or an extension of time to the construction contract. The Construction Change Directive is used

- A. when an unsafe, hazardous or other similar condition exists,
- B. when failure to achieve prompt resolution of the change will result in a demobilization of the Contractor, its subcontractors and/or agents,
- C. when failure to achieve prompt resolution will result in additional cost, and/or a significant delay in completing the project.

A Construction Change Directive does not change the G.M.P. or the contract time but is evidence that the parties expect that the change will be incorporated in a subsequently issued Change Order.

10.1.2 A Change Order is a written order to the Contractor signed by the County, Architect/Engineer, and Contractor, issued after the execution of a Task Order, authorizing a change in the Project and/or an adjustment in the construction authorization, the Contractor's fee, or the Project Completion Dates. Each adjustment in the G.M.P. resulting from a Change Order shall be documented clearly to separate the amount attributable to the cost of the change in the Project from the original cost of the Project.

- 10.1.3 The increase or decrease in the G.M.P. resulting from Change Orders in the Project shall be determined by one of the following ways:
- A. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect/Engineer and County;
 - B. by unit prices stated in the Contract or subsequently agreed upon;
 - C. by cost as defined in Article 9 plus a mutually acceptable fixed or percentage fee; or
 - D. by the method provided in Section 10.1.4 below.

10.1.4 If none of the methods set forth in Section 10.1.3 is agreed upon, the Contractor, provided he receives a written order signed by the County, shall promptly proceed with the work required by the Construction Change Directive involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect/Engineer will establish an estimated cost of the work and the Contractor shall not perform any work whose cost exceeds that estimate without prior written approval by the County. In such case, and also under Section 10.1.3 above, the Contractor shall keep and present, in such forms as the County may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the G.M.P. to be allowed by the Contractor to the County for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in the Cost of the Project and the associated Contractor's fee subject to the limits set forth in Article 7.

10.1.5 If unit prices are stated in the Task Order or subsequently agreed upon and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the County or the Contractor, the applicable unit prices and G.M.P. shall be equitably adjusted.

- 10.1.6 Should the Contractor or his contracted subcontractors encounter:
- A. concealed conditions in the performance of the Work below the surface of the ground; or
 - B. concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or County furnished information; or
 - C. unknown physical conditions below the surface of the ground; or
 - D. concealed or unknown conditions in an existing structure of an

- E. unusual nature; or differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract,

then the G.M.P. and the Project Completion Dates shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2. and Article 11.

Upon discovery of concealed or unknown conditions, the Contractor shall notify the County and Architect/Engineer within twenty-four (24) hours of discovery, and not proceed with Work until such notice has been given and a response is issued by the County. The Architect/Engineer will evaluate the alleged unknown or concealed condition and, if warranted, recommend to the County that the G.M.P. and Project schedule be increased or decreased accordingly. No claim under this Article may be made unless notice, as herein provided, is given prior to Work being performed. No equitable adjustment shall be permitted if this notice provision is not complied with.

Within ten (10) calendar days of submitting its notice, the Contractor shall submit to the County its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) days from notice, the Contractor shall submit detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc.

- 10.1.7 The Contractor shall review any County-directed change and shall respond in writing within seven (7) calendar days after receipt of the proposed change (or such other reasonable time as the County may direct), stating the effect of the proposed change upon the Contractor's Work, including any increase or decrease in the Contract time or price. The Contractor shall furnish to the County an itemized breakdown of the quantities and prices used in computing the change in Contract price.

The County and Architect/Engineer shall review the Contractor's proposal and respond to the Contractor within seven (7) calendar days of receipt. If a change to the Contract price and time for performance are agreed upon, both parties shall sign the Change Order. Changes to the Contract time and/or price shall be effective when signed by both parties. It shall be the County's discretion as to whether each Change Order requires the Architect/Engineer's signature.

10.2 **Claims for Additional Cost or Time**

All claims for additional cost or time shall be made by request for a change order submitted as provided in Article 36 COUNTY-CONTRACTOR

Contract.

10.2.1 If the Contractor is delayed at any time in the progress of the work by any act or neglect of the County or the Architect/Engineer or of any employee of either or by any separate contractor employed by the County or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control or by delay authorized by the County pending resolution or disputes, and such delay extends the Project Completion Dates, the Dates shall be extended by Change Order for such reasonable time as the Construction Team may determine.

10.2.2 All Change Orders must indicate that the Contract Time for Completion is not changed or is either increased or decreased by a specific number of calendar days. The previous Time for Completion and, if there is one, the new Time for Completion must be stated. The Contractor must provide written justification for an extension of the Time for Completion to the Architect/Engineer and to the County. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Task Order as adjusted by prior change orders or amendments to the Task Order, not just an increase or decrease in the time needed to complete some portion of the total Work. No increase to the Time for Completion shall be allowed unless the additional or changed Work increases the length of the critical path.

Approved increases in time required to complete the Work shall be added to the Time for Completion. Decreases in time as a result of the change order shall be demonstrated by a decrease in the critical path of the Work if CPM scheduling is properly used and updated by the Contractor. If no CPM is used the County shall determine the appropriate decrease by the best means possible. Approved decreases in the time needed to complete the Work shall be deducted from the Contract completion date. The change to time and Contract price allowed by each change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty-five (45) days to give the Contractor an opportunity to demonstrate a change in the time and price needed to complete the Work.

Only delays which are determined to extend the critical path for the

schedule for constructing the Project will result in a time extension. Neither the County nor the Contractor shall be considered to own the schedule float time.

10.3 Minor Changes in the Project (Realignment of Work)

The County and/or Architect/Engineer will have authority to order minor changes in the Project not involving an adjustment in the G.M.P. or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be affected by written order. Documentation of changes shall be determined by the Construction Team, and included in the Project Manual. Changes shall be approved by the Project Director, Architect/Engineer. It shall be the County's discretion as to whether a Realignment of Work requires the Architect/Engineer signature. All changes or realignments of work performed within the Guaranteed Maximum Price will not include overhead, profit or General Condition additional costs, since costs are absorbed within the Guaranteed Maximum Price (G.M.P.).

- 10.4 In any emergency affecting the safety of persons or property, the Contractor shall act at its discretion, to prevent threatened damage, injury or loss. Any increase in the G.M.P. or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in this Article 10.

ARTICLE 11
DISCOUNTS

- 11.1 All discounts for prompt payment shall accrue to the County to the extent the Cost of the Project is paid directly by the County or from a fund made available by the County to the Contractor for such payments.

To the extent the Cost of the Project is paid with funds of the Contractor, all cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project.

ARTICLE 12
PAYMENTS TO THE CONTRACTOR

- 12.1 Monthly Statements - The Contractor shall submit to the County a sworn statement along with the Certificate for Payment, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Contractor's fees due as provided in Article 8. This data shall be attached to and/or made available in a digital/electronic format compatible with the County's software alongside the Certificate for Payment Form, and shall include, but not be limited, to the following:

- A. Daily Reports;
 - B. Updated Project Schedule;
 - C. Daily red line As-Builts drawing(s) review;
 - D. Provide a billing report with each payment application that shows a breakdown of costs incurred by line item. This report should correspond with the amounts being charged on the Schedule of Values.
 - E. Provide backup copies of all invoices that the County is being billed for, including vendor invoices, payments to subcontractors, cell phone statements, insurance, petty cash receipts, etc. These invoices should be coded by the line item that they correspond to on the billing report and Schedule of Values.
 - F. Provide backup copies and documentation of all costs incurred under General Conditions.
 - G. Provide backup copies of all payroll that details which labor amounts were paid to whom on a weekly basis.
 - H. Provide copies of all subcontractor contracts.
- * The amounts charged on the Payment Application must be accurate and correspond with the total dollar amount of backup provided by the Contractor.

Payment by the County to the Contractor of the statement amount shall be made in accordance with Section 218.735, Florida Statutes.

Five percent of each payment shall be held by the COUNTY as retainage until Final Completion, provided the retainage is not the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, Florida Statutes or otherwise the subject of a claim or demand by the COUNTY.

County may refuse to certify payment and withhold a Certificate for Payment in whole or in part, in accordance with subsection(s) above, to such extent as may be reasonably necessary to protect the County from loss because of:

- A. defective work not remedied;
- B. third party claims filed or reasonable evidence indicating probably filing of such claims;
- C. failure of Contractor to make payments properly to subcontractors, consultants, or for labor, materials or equipment;
- D. evidence that the Project cannot be completed for the unpaid balance of the G.M.P., as adjusted;
- E. evidence that the Work will not be completed by the Scheduled Completion Date, as adjusted, and that the unpaid balance would not be adequate to cover the liquidated damages for the anticipated delay;

- F. failure to carry out the Work of the Project in accordance with the Contract Documents; or

If the County is unwilling to certify payment in the amount of the Application for Payment submitted by the Contractor, County will provide Contractor with written reasons for its refusal, within three (3) calendar days from date of receipt. If Contractor and County cannot agree on a revised amount, County will, within one (1) day of the aforesaid notification, promptly issue a Certificate for Payment as to the undisputed amount with respect to which County concurs.

- 12.2 Final Payment - Final payment constituting the unpaid balance of the Cost of the Project and the Contractor's fee, shall be due and payable in accordance with Florida Statutes after an *acceptable* Certificate of Final Completion has been issued **and all contractual closeout obligations have been met by the Contractor**. Before issuance of final payment, the Contractor, subcontractors and agents shall submit original, sworn, notarized statements that all payrolls, material bills, and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, Final As-Builts in red-lined .pdf format acceptable to the County, have been submitted and instruction and documentation for the County's operating and maintenance personnel is complete.
- 12.3 Payments for Materials and Equipment - Payments may be made for material and equipment not incorporated in the work but insured, itemized, delivered and suitably stored at the site or another location subject to prior approval and acceptance by the County on each occasion.
- 12.4 Withholding Payments to Subcontractors - The Contractor shall not withhold payments to Subcontractors if such payments have been made to the Contractor. Should this occur for any reason, the Contractor shall immediately return such monies to the County, adjusting pay requests and project bookkeeping, as required.

ARTICLE 13
COUNTY'S RIGHT TO PERFORM CONSTRUCTION
AND TO AWARD SEPARATE CONTRACTS

- 13.1 When permitted by law, the County reserves the right to perform construction or operations related to applicable Task Orders with the County's own forces. The County may also award separate contracts in connection with other portions of certain projects or other construction or operations on the site under conditions identical or substantially similar to those outlined herein. If the Contractor claims that a delay or additional cost is involved because of such action by the County, the Contractor shall make such claim as provided in this Contract.

- 13.2 The County shall provide for coordination of the activities of the County's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the County in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the County until subsequently revised.
- 13.3 Unless otherwise provided in the Contract Documents, when the County performs construction or operations with the County's own forces, the County shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract.
- 13.4 The Contractor shall afford the County and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities onsite, when necessary and appropriate, and shall coordinate with the Contractor's construction and operations with the County and/or separate contractors, as required.
- 13.5 If part of the Contractor's Work depends on work conducted by the County or a separate contractor, then the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer or County apparent discrepancies or defects in such other work that would render it unsuitable for such proper execution and results. Failure of the Contractor to report shall constitute an acknowledgment that the County's or separate contractor's completed or partially completed work is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.
- 13.6 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.
- 13.7 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the County or separate contractors.

ARTICLE 14
MISCELLANEOUS

- 14.1 Interest - Any monies not paid when due to either party under a Task Order shall not bear interest except as may be permitted by Section 218.70 et seq., Florida Statutes, ("The Local Government Prompt Payment Act").
- 14.2 Harmony - Contractor is advised and hereby agrees to exert every reasonable

and diligent effort to assure that all labor employed by Contractor and his Subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and Contractors now or hereafter on the site of the Project.

Contractor further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Contractor's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

- 14.3 Apprentices - If the Contractor employs apprentices on the project, the behavior of the Contractor and the County shall be governed by the provision of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Contractor will include a provision similar to the foregoing sentence in each subcontract.
- 14.4 Minority Participation - The Contractor shall *diligently attempt* to award his material contracts, subcontracts and sub-subcontracts to firms having a letter of certification as a minority business from the "Office of Minority Business Assistance, Department of General Services, or any other Federal, Florida County or City certification.
- 14.5 Minority Employment Information - The Board of County Commissioners requires contractors on construction contracts that would otherwise be required to file an EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their G.M.P. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an EEO Form 1 Report with your G.M.P. will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract. See **Attachment "D"**.
- 14.6 Copyright Clause No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this contract shall be subject to copyright by Contractor in the United States or any other Country.

[ATTACHMENTS TO FOLLOW]

ATTACHMENT "A"

DIRECT PURCHASING PROCEDURE CONSTRUCTION MANAGEMENT CONTRACT

INTENT: The County intends for these procedures to govern the County's direct purchases of selected materials so that the County may take advantage of its tax-exempt status. All monies which would have been payable as taxes, if not for County direct purchase under these procedures, will inure solely to the benefit of the County. The County's direct purchase of materials will not minimize or conflict with the Contractor's responsibility for the purchase, installation, coordination, storage, protection, warranty, etc. of the materials as described herein and in the plans and specifications of the Contract. The Contractor acknowledges that it retains all rights, obligations, and responsibilities outlined herein for any items the County purchases directly, and the Contractor shall be responsible for ensuring the provisions outlined in the Contract are followed and enforced against any suppliers and/or subcontractors.

Definitions: For the purpose of these Procedures, the following words have the following definitions.

- a) Contract: Construction Contract between Brevard County, Florida, and the Contractor.
- b) County Purchased Materials: Materials purchased directly by the County through execution and delivery of a Purchase Order.
- c) G.M.P. - Guaranteed Maximum Price established under the Contract.
- d) Materials: Tangible Personal Property necessary for completion of the Project.
- e) Materials Deduction Summary: Written document signed by County's representative and Contractor setting forth the amounts of County Purchased Materials, plus applicable taxes were the purchase not exempt from such taxes, as reflected in the parties' previously executed deductive change order(s) to the Contract showing deduction of such Materials from the G.M.P.
- f) County: See Definition in Article I, section 1.3.

- g) County's Representative: See Definition in Article I, section 1.3.
- h) Project: See Definition in Article I, section 1.3.
- i) Purchase Order: The County's request for Materials from a particular vendor or supplier when fully executed and delivered to the Contractor, and the County's promise to pay for the Material specified upon delivery and acceptance at the Project Site, and presentation of an invoice by the Contractor to the County certifying payment of same.
- j) Material Requisition: A request by the Contractor to the County that the County directly purchase specific items described in sufficient detail, including quantity, grade, brand, etc., along with the vendor or material supplier and that vendor or material supplier's quoted price for the Materials.

Overview: The County requires the Contractor to notify the County's Representative of Materials needed for the Project exceeding \$5,000.00 in value, through a Material Requisition form. For the purpose of these Procedures, the Contractor will assign to the County any rights the Contractor may have under quotes, contracts or commitments received from the particular vendor or supplier for the Materials described in the Material Requisition.

Any Materials purchased by County pursuant to these Procedures shall be referred to as "County Purchased Materials", and the responsibilities of the County and Contractor relating to such County Purchased Materials shall be governed by the terms and conditions of these Procedures, which shall take precedence over other conditions and terms of the Contract Documents where inconsistencies or conflicts exist. The invoiced amount of County Purchased Materials and applicable sales tax had the purchases not been tax exempt, once finalized through the County's Purchase Order and after confirmation of completed delivery and acceptance pursuant to this Procedure, will be deducted from the G.M.P., as defined in the Contract, by deductive change order or crediting the deducting allowance within the G.M.P. as applicable.

County Direct Purchasing Requirements and Procedures: When Materials purchased for the Project are estimated to be \$5,000 or greater and time will allow for County Direct Purchase, Contractor shall prepare a Material Requisition form, *(to be provided by the County)*, acceptable to County, and which specifically identifies the Materials which County may, in its discretion, elect to purchase directly. The Material Requisition form shall be complete when submitted, subject to modifications by the County that seek to ensure this Contract is adhered to and the work is completed within the timeframes established in the Task Order, and all information requested provided. Along with the Material Requisition the Contractor must provide:

- a) The name, address, telephone and fax number and contact person for the material supplier;
- b) Manufacturer or brand, model or specification number of the item;
- c) Quantity needed as estimated by Contractor;
- d) The price quoted by the supplier for the Materials identified therein;
- e) Any sales tax associated with such quote if it were not purchased by a tax-exempt entity;
- f) Shipping and handling cost, including associated insurance;
- g) Delivery dates as established by the Contractor;
- h) Subcontractor's written acknowledgment of these Procedures for County Direct Purchase of Materials.

After receipt of the Material Requisition, the County's Representative will determine whether the County will directly purchase the Materials described in the Material Requisition, and communicate consent or decline to purchase the materials to the Contractor within twenty-four (24) hours, excluding weekends and holidays. Brevard County's Purchasing Division shall be the County's approving authority on Purchase Orders of County Purchased Materials, but the Purchasing Division must coordinate with the Facilities Department and the County Attorney's Office to ensure proper implementation of this Procedure. Any necessary documents, including, but not limited to, tri-party agreements for the item(s) purchased under this Procedure will be executed, as needed, by all parties. If the County consents to purchase the Materials, the County shall issue a Purchase Order for same. The County shall issue the original Purchase Order, and the Contractor shall deliver the Purchase Order to the subcontractor. The Purchase Order shall require (1) that the supplier provide the required shipping, (2) that the supplier provide the required shipping and handling insurance, and (3) delivery of the County Purchased Materials on the delivery dates provided by the Manager in the Material Requisition.

The Contractor shall be fully responsible for all matters relating to the receipt of County Purchased Materials under these Procedures, including, but not limited to, preparation of shop drawings and submittals, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials due to the negligence of the Contractor. The Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Contractor for the Materials furnished. The Contractor shall provide all services required for the unloading, handling and storage of Materials through installation. The Contractor agrees to indemnify and hold the County harmless from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of Contractor.

The Contractor shall ensure that County Purchased Materials conform to the Specifications, and determine prior to incorporation into the Work, if such Materials are patently defective, and whether such Materials are identical to the Material ordered and match the description on the bill of lading. As County Purchased Materials are

delivered to the job site, the Contractor shall inspect all shipments from the suppliers, and, if in conformance with the Purchase Order, approve the vendor's invoice for materials delivered. The Contractor shall assure that each delivery of County Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of an itemized delivery ticket, packing slip or invoice from the supplier conforming to the Purchase Order against which the purchase is made, together with such additional information as the County may require. The Contractor will then forward the documentation to the County.

If the Contractor discovers defective or non-conformities in County Purchased Material upon inspection, the Contractor shall not use such non-conforming or defective Materials in the Work and instead shall promptly notify the County of the defective or non-conforming conditions and coordinate the repair or replacement of those Materials without any undue delay or interruption to the Project. All repair, maintenance or damage-repair calls shall be forwarded to the Contractor for resolution with the appropriate supplier, vendor, or subcontractor. If the Contractor fails to perform such inspection, the condition of which the Contractor either knew or should have known by performance of an inspection, Contractor shall be responsible for all damages to the County resulting from Contractor's incorporation of such Materials into the Project, including liquidated or delay damages. Specific consideration has been given for this provision.

On a bi-weekly basis, Contractor shall be required to review invoices submitted by all suppliers of County Purchased Materials delivered to the Project Site during that month and either concur or object to the County's issuance of payment to the suppliers, based on Contractor's records of materials delivered to the site. In order to arrange for the prompt payment to the supplier, the Contractor shall provide to the County a list indicating the acceptance of the goods or materials within fifteen (15) days of receipt of said invoice for goods or materials. The list shall reference the applicable purchase order and include a copy of the invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the County. Upon receipt of the appropriate documentation in duplicate, the County shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be delivered directly to the supplier. If any discounts are available from the supplier or vendor, they shall accrue to the benefit of the County, and the amount quoted by the vendor, plus applicable tax, shall be deducted from the G.M.P. or credited to the deductive allowance as applicable. The Contractor agrees to assist the County to immediately obtain partial or final releases or waivers as appropriate.

Following performance of the Purchase Orders by the suppliers, and submittal of documentation confirming same to County with an invoice for payment by County, the Contractor shall execute and deliver to the County at the end of each month along with the Contractor regular pay requests, a Materials Deduction Summary setting forth the full value of all County Purchased Materials, plus all taxes which would have been payable on the purchase of the Materials had they not been County purchased. The Materials

Deduction Summary shall show all sums to be deducted by an appropriate deductive change order, and ultimately the G.M.P., to date. The Board of County Commissioners, or their authorized representative, shall be the approving authority for the County on the Materials Deduction Summary for County Purchased Materials.

The Contractor shall maintain records of all County Purchased Materials incorporated into the Work. These records shall be available for inspection by the County upon request.

Notwithstanding the delivery of County Purchased Materials to the Project Site for the Contractor's inspection, custody and incorporation into the Work, the County shall retain legal and equitable title to any and all County Purchased Materials. The transfer of possession of County Purchased Materials from the County to the Contractor shall constitute a bailment for the mutual benefit of the County and the Contractor solely for the purposes set forth herein. The County shall be considered the bailer and the Contractor the bailee of the County Purchased Materials. County Purchased Materials shall be considered returned to the County for purposes of their bailment at such time as they are incorporated into the Project or are returned to the vendor or supplier at the discretion of the Contractor prior to payment for the Purchase Order by County.

The County, in its sole discretion, may purchase and maintain any necessary insurance sufficient to protect against any loss or damage to County Purchased Materials. Such insurance shall cover the full value of any County Purchased Materials not yet incorporated into the Project from the time the County first takes title to any of such County Purchased Materials and the time when the last of such County Purchased Materials is incorporated into the Project, or are returned to the vendor at the Contractor's discretion prior to County's payment for same. This does not relieve the Contractor from purchasing and/or having in place any necessary policies of insurance to protect the County against any loss(es) associated with or relating to the County Purchased Materials for which the Contractor is responsible.

The County shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or any extra costs or time resulting from any delay in the delivery of, or defects in, County Purchased Materials. The Contractor shall be responsible in any and every way for ensuring the materials and timelines required herein are met subject to Article 10.2 of this Contract unless the delay is directly caused by the action or inaction of the County.

TIME IS OF THE ESSENCE WITH THIS CONTRACT SUBSTANTIAL HARM WILL BE DONE TO THE COUNTY IF CONTRACTOR FAILS TO MEET THE TIMELINES ESTABLISHED IN THE TASK ORDER.

ATTACHMENT "B"

ORDINANCE 98-37

AN ORDINANCE AMENDING CHAPTER 2 OF THE BREVARD COUNTY CODE TO CREATE ARTICLE VII, A PROCEDURE FOR PREQUALIFYING CONSTRUCTION CONTRACTORS, FOR COMPETITIVE BIDDING CRITERIA AND FOR DEBARMENT OF CONSTRUCTION CONTRACTORS AND SURETIES; PROVIDING FOR ALTERNATIVE CONSTRUCTION DELIVERY METHODS; PROVIDING FOR PREQUALIFICATION AND COMPETITIVE BIDDING CRITERIA, PROCEDURE, AND FOR A STANDARD OF PROOF; PROVIDING FOR EDITING OF THE ORDINANCE FOR INCLUSION WITHIN THE BREVARD COUNTY CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 255.20, Fla. Stat. (1997) requires that standards and procedures for determining the lowest qualified and responsive bidder or award of a construction contract under any delivery method be established if a bidder is selected for any reason other than price; and

WHEREAS, the Board has determined that it is in the public's best interest to provide such standards and procedures so that the Board may select the most qualified and responsive bidder; and

WHEREAS, the Board has determined that it is in the public's best interest to prevent construction firms and sureties who have defaulted on a previous contract with the County from future bidding on County projects through a debarment procedure;

THEREFORE, be it ordained by the Board of County Commissioners of Brevard County, Florida as follows:

Section 1: Chapter 2 of the Brevard County Code shall be amended to create Article VII as follows:

1. **DEFINITIONS:** The following words shall have these meanings throughout this article:

"AFFECTED PARTY" means an individual or business which has submitted a bid, offer, proposal, quotation, or response which is rejected, or is found unqualified under the provisions of this article, or which would be selected if a low bidder was found unqualified or nonresponsive.

"BOARD" means the Board of County Commissioners of Brevard County, Florida.

“COMMITTEE” means two or more persons designated to evaluate prequalification and responsiveness criteria. Committees established by the County Manager may be intradepartmental, or include representatives of several departments interested in the administration and success of the construction project.

“DEBARMENT” means the exclusion for cause of a vendor or contractor, or subcontractor from bidding or doing business with the County on a temporary or permanent basis.

“MINOR IRREGULARITY” means a variation from the Invitation to Bid which does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders, or does not adversely impact the interests of the agency.

“QUALIFIED BIDDER” means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which has the capability in all respects to fully perform the contract requirements, and has the financial stability, honesty, integrity, skill, business judgement, experience, facilities and reliability necessary to give reasonable assurance of good faith and performance.

“REQUEST FOR QUALIFICATION” (“RFQ”) means the process by which the County may prequalify individuals or businesses for a particular project before requesting bids for the project, thereby limiting the pool of bidders to these prequalified.

“RESPONSIVE BIDDER” means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which conforms in all material respects to the solicitation, including but not limited to compliance with the submittal of specified insurance and bond requirements.

1. Any County contract for the construction or improvement of a public building, structure, or other public construction work that is estimated in accordance with general accounting principles to have construction costs of more than fifty thousand dollars (\$50,000.00) shall be competitively awarded to the lowest, qualified and responsive bidder in accordance with this article, unless the project (1) fits within exceptions set forth in s. 255.20, Fla. Stat., as amended from time to time, (2) is a contract governed by the Consultant’s Competitive Negotiation Act, or (3) is awarded under another contract delivery method authorized by this article. Nothing in this article shall be construed to require competitive award of every County construction work, nor to prohibit the Board from rejecting all bids if competitively bid, or to prevent the Board from waiving minor irregularities in any bid.
2. (a) Potential lump sum bidders responding to a request for qualifications are required to submit information required by this article and as identified in the RFQ

package. A committee identified in the RFQ package will determine whether a potential bidder is qualified and responsive as defined in this article.

(b) For projects advertised for lump sum bid without prior prequalification, the apparent low bidder, after the formal bid opening, will be required to submit the following prequalification information identified in the bid package within five (5) business days after the bid opening. Failure to provide prequalification information within this time frame may be considered as grounds for finding the apparent low bidder nonresponsive. If the apparent low bidder cannot provide adequate documents for review, or the submitted documents indicate the apparent low bidder or any subcontractors are not qualified, or if the bidder's package is determined to be nonresponsive, the Committee will reject the bidder or any of its subcontractors. In the event the bidder is found unqualified or non-responsive, the apparent second low bidder will be contacted and afforded the previous mentioned five (5) days to submit pre-qualification documents. This process will continue until the lowest qualified and responsive bidder is established. In the event that a subcontractor is found unqualified or non-responsive, the potential bidder or prime contractor will have five (5) business days to submit a substitute subcontractor for the same bid price or withdraw the original bid.

(c) In addition to lump sum contracts for construction, the Board may use the following delivery methods for construction or improvement of a public building, structure, or other public construction work: construction manager, design/build, or continuing contracts based on unit prices. The Board may also enter into continuing contracts with Contractors using the pre-qualification procedure set forth herein for potential lump sum bidders. The individual projects shall be awarded under a continuing contract using the following criteria:

Ability of professional personnel given project's special characteristics; past performance; willingness to meet time and budget requirements; location; recent, current and projected workloads of the firms available under continuing contract; volume of work previously awarded to each firm under a continuing contract provided distribution does not violate the principle of selection of the most qualified firm for the project; previous experience on County projects.

The County Manager will establish procedures for the Board to hear any affected party with a complaint or appeal as to any recommendation or finding made pursuant to this article. Any affected party's complaint or appeal must be presented, in writing, to the County Manager's office within five (5) business days of the posting of a committee's decision.

(d) At the completion of each competitively awarded County construction project, the County department which administered the construction contract shall

complete an evaluation of the contractor's performance on a form to be established by the County Manager. The department may also complete evaluations of critical subcontractors using the same form. All such records shall be copied to the party evaluated and maintained by County Purchasing. Any party evaluated may submit a written response of any length, which response shall be filed with the evaluation.

3. Potential bidders, the apparent lowest bidder, or the person providing services under any other contract delivery method, and applicable subcontractors identified in the bid or request for qualification package for any County construction project which is to be competitively awarded shall be evaluated to determine whether the bidder and its subcontractors are qualified. In evaluating qualifications, the County shall consider the following information:
 - A Contractor's Pre-Qualification Statement for the prime contractor and subcontractors performing parts of work identified in the bidding documents as critical to the project's success. The Pre-Qualification Statement shall be provided on a form to be established by the County Manager;
 - Most current financial statement, but not more than one (1) year old, indication of bondability, or, if project is under \$100,000, other evidence of financial capability as identified in the bid documents;
 - Resumes of Contractor and Subcontractor's key personnel, including project manager and superintendent levels, showing job history, education related to work to be performed and any license, training, and experience related to the work which that individual will perform;
 - List of subcontractors and suppliers, and items of work to be performed by the Contractor's own work force;
 - County evaluations of the performance on County projects;
 - References obtained from individuals or businesses with whom the contractor or subcontractor has performed work or conducted business;
 - Any other relevant qualifications, data or information identified in the bidding documents to be critical to the success of the project.
4. The County Manager will establish committees which may debar a contractor, contractor's key personnel, contractor's surety, subcontractor and subcontractor's key personnel, or any entity which key personnel are later employed or retained by in a supervisory position, from bidding on any County project under the circumstances enumerated below. The decision to disbar is

discretionary, the seriousness of the offense and all mitigating factors should be considered in making the decision to disbar. The notice of debarment shall state the time when such debarment will be lifted, if ever, and the contractor's right to appeal such debarment to the Board of County Commissioners under the Board's regular agenda. The Board reserves the power to waive or lift any committee-imposed suspension or debarment.

An individual or business may be *permanently* debarred for any of the following reasons:

- Conviction or a judgment obtained in a court of competent jurisdiction for:
- Commission of a fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract
- Violation of any Federal or State of Florida anti-trust or anti-racketeering statutes arising out of submission of bids or proposals;
- Commission of embezzlement, theft, forgery, bribery, falsification of or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a County contractor, subcontractor or vendor;
- If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof.

Competent and substantial evidence of a violation of a County contract provision, as set forth below, when the violation is of a character so as to justify debarment action such as:

- Failure to perform in accordance with the specifications or delivery requirements in a contract;
- A history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; provided, that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. Failure to perform for unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis of debarment.

Upon adequate evidence, an individual or business may be *temporarily* debarred for a period up to three (3) years based upon substantial evidence of involvement in any of the causes cited in paragraph (b) above.

Section 2: Inclusion in Code: It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Brevard County Code; and that the sections of this ordinance may be renumbered or re-lettered to accomplish such intentions.

Section 3: Severability: If any provision of this ordinance is held to be illegal or invalid,

the other provisions shall remain in full force and effect.

Section 4: Effective Date: This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment.

ATTACHMENT "C"

PUBLIC CONSTRUCTION BOND

(Payment and Performance)

Bond No. _____

BY THIS BOND, We _____, having its principal place of business at _____, (____) _____ - _____, herein called Principal, and _____, having its principal place of business at _____, (____) _____ - _____, a corporation as Surety, are bound to Brevard County, Florida, 2725 Judge Fran Jamieson Way, Viera, Florida, 32940, (321) 633-2000, herein called County, in the sum of _____ (\$ _____ .00) for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Performs the contract number _____ dated _____ between Principal and County for construction of _____ located at _____, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays County all losses, damages, expenses, costs, and attorney's fees,

including appellate proceedings, that County sustains because of a default by Principal under the contract; and

4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.
5. This Bond shall be recorded in the public records of Brevard County, Florida, at the Principal's expense. A certified copy of this recorded Bond shall be provided to the County. No payments shall be made to the Principal until the Bond has been recorded and a certified copy has been provided to the County.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2) and (10), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

Signed and sealed this ____ day of _____, 20__.

Witness:

Principal

Its: _____

Title

SEAL

Surety

Its: _____

Title

SEAL

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ certify that I am the Secretary of the Corporation named as Principal in the within bond; that _____ who signed the said bond on behalf of the Principal, was then _____ of said Corporation; that I know the Principal, and the Principal's signature hereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

_____(Seal
) Secretary

STATE OF _____)

ss

COUNTY OF _____)

Before me, a Notary Public, duly commissioned, qualified and acting, personally appeared _____ to me well known, who being by me first duly sworn upon oath, says that this individual is the Attorney-in-Fact, for the _____ and that said individual has been authorized by _____ to execute the foregoing bond on behalf of the Contractor named therein in favor of Brevard County, Florida.

Subscribed and sworn to before me this ___ day of _____, 20___, A.D.

(Attach Power of Attorney)

Notary Public
State of Florida-at-Large

My Commission Expires: _____

My Commission Number is: _____

ATTACHMENT "D"
MINORITY EMPLOYMENT INFORMATION

The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their G.M.P. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an Acknowledgment and/or EEO Form 1 Report with your G.M.P. will be reason to declare your proposal "non- responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract.

Please fill out and sign one (1) of the following statements:

1. My Company or subcontractors are required to submit the EEO Form 1 Report and they are attached.

Company Name: _____
Signature: _____ Date: _____

2. My Company or subcontractors are not required to submit the EEO Form 1 Report.

Company Name: _____
Signature: _____ Date: _____

ATTACHMENT "E"
CERTIFICATE OF FINAL COMPLETION

PROJECT NO. & TITLE:

ARCHITECT:

CONTRACT DATE:

CONTRACTOR:

DATE OF FINAL COMPLETION:

CERTIFICATE OF ARCHITECT/ENGINEER

Based on my inspections and investigation of the Contractor's work under the above referenced contract, I certify that the work, in general, has been completed in accordance with the contract documents, that all matters previously brought to the Contractor's attention as incomplete or defective have been resolved pursuant to my direction, and that the Contractor has submitted the attached sworn affidavit as evidence that the Contractor has paid all labor, materials, and other charges against the project in accordance with the terms of the Contract.

A/E Firm Name: _____

By: _____

TO BE COMPLETED BY ARCHITECT/ENGINEER:

DATE:

DAYS:

THROUGH THE SUBSTANTIAL COMPLETION PHASE

1. Notice to Proceed (N.T.P.)
2. Time Specified in Original Contract for Substantial Completion (S.C.)
3. Extension Granted By Change Orders (Days Between Original Contract S.C. and Final Contract S.C.)
4. Total Days Allowable to Substantial Completion (Add Lines 2 and 3)
5. Project Substantially Completed as Certified by A/E (Total Days from NTP through Date Certified by A/E)
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun)

THROUGH THE FINAL COMPLETION PHASE

1. Time Specified in Contract, Between Substantial and Final Completion
2. Extensions Granted by Change Orders (Days Between S.C. and Final Completion)
3. Total Days Allowable Between Substantial Completion and Final Completion (Add Lines 1 and 2)
4. Date Actually Completed and Total Days Between and Date Certified by A/E as Actually being Finally Completed).
5. Final Completion Overrun (Subtract Line)

Architect: _____ Date:

Project Manager: _____ Date:

Facilities Contractor: _____ Date:

ATTACHMENT B FEDERAL CONTRACT REQUIREMENTS

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) CONTRACT REQUIREMENTS

During the performance of this contract, the Consultant agrees as follows:

1. The consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The consultant agrees to post in conspicuous places, available to all employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
2. The consultant will, in all solicitations or advertisements for employees placed by or on behalf of the consultant, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex or national origin.
3. The consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.
5. The consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the consultant's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary

of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the consultant may request the United States to enter into such litigation to protect the interests of the United States."

8. **Clean Air Act and the Federal Water Pollution Control Act:** (For all contracts in excess of \$150,000)

Clean Air Act -

- i. The consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- ii. The consultant agrees to report each violation to the Brevard County Facilities Department and understands that the Brevard County Facilities Department will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional office.
- iii. The consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act -

- i. The consultant agrees to comply with applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- ii. The consultant agrees to report each violation to the Brevard County Facilities Department and understands and agrees that the Brevard County Facilities Department will, in turn, report each violation to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

9. **Suspension and Debarment:**

- i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the consultant is required to verify that none of the consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- ii. The consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- iii. This certification is a material representation of fact relied upon by Brevard County Facilities Department. If it is later determined that the consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to

remedies available to Federal Emergency Management Agency and Brevard County Facilities Department, the Federal Government may

pursue available remedies, including but not limited to suspension and/or debarment.

10. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended):**

Consultants who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient.

11. **Certification for Contracts, Grants, Loans, and Cooperative Agreements**

(To be submitted with each bid or offer exceeding \$100,000)

The Consultant certifies, to the best of his or her knowledge, that:

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

12. **Procurement of Recovered Materials:**

In the performance of this contract, the consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines website at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

13. **Additional FEMA Requirements:**

A. **Access to Records:**

- i. The consultant agrees to provide Brevard County Facilities Department, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative access to any books, documents, papers and records of the consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- ii. The consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The consultant agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the contract.

B. **DHS (Department of Homeland Security) Seal, Logo and Flags:**

The consultant shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

C. **Compliance with Federal Law, Regulations and Executive Orders:**

The consultant acknowledges that FEMA financial assistance will be used to fund the contract only. The consultant will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

D. **No Obligation by Federal Government:**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

E. **Fraud and False or Fraudulent or Related Acts:**

The consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the consultant's actions pertaining to this contract.

CONTINUING CONSTRUCTION MANAGER CONTRACT

AMERICAN RESCUE PLAN ACT

Contract Clauses required under 2 CFR Part 200 and Appendix II to 2CFR Part 200 (85 FR 49577, effective date November 12, 2020)

The following provisions apply to this Contract, are part of the Contract documents, and control over any conflicting provisions to other contract provisions:

(1) VIOLATION OR BREACH OF CONTRACT TERMS

See the following Contract provisions:

Force Majeure, see Section 10

Termination, see Section 27.

Dispute Resolution, see Section 26.

(2) EQUAL EMPLOYMENT OPPORTUNITY

The provisions of this Section apply to “federally assisted construction contracts” as defined in 41 CFR Part 60-1.3

(A) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(B) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for

employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(C) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(D) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(E) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(F) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(G) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(H) The Contractor will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Owner further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Owner agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Owner further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Owner agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(3) CONTRACT WORK HOURS AND SAFETY STANDARD ACT

The provisions of this section apply to construction contracts in excess of \$100,000 that use mechanics or laborers, as required by 40 U.S.C. 3702 and 3704 as supplemented by 29 CFR Part 5.

No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic to work for the Contractor or subcontractor in excess of forty hours in a workweek for which he or she is employed by the Contractor/subcontractor unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate for all hours worked in excess of forty hours in such workweek.

Additionally, neither the Contractor or any subcontractor shall require any laborer or mechanic employed in the performance of the work under this Contract to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to health or safety, as established under construction safety and health standards the Secretary of Labor prescribes by regulation.

(4) CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

The provisions of this Section apply to contracts and subgrants of amounts in excess of \$150,000.

(A) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 – 7671q).

(B) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

(C) The Contractor agrees to report each violation to the County. The Contractor and the County will, in turn, report each violation to the United States Treasury, and the Regional Office of the Environmental Protection Agency (EPA).

(5) DEBARMENT AND SUSPENSION

The provisions of this section apply to subcontracts with a value equal or in excess of \$25,000.

(A) A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension."

(B) SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(C) The Contractor verifies and certifies the neither the Contractor, its principals (defined at 2 CFR Section 180.995) or its affiliates (defined at 2 CFR Section 180.905) are excluded (as defined at 2 CFR 180.940) or disqualified (defined at 2CFR Section 180.935) from participating in this Contract.

(D) The Contractor certifies and agrees to comply with 2 CFR Part 180, Subpart C throughout the term of the Contract and agrees to include a requirement to comply with these regulations in any lower tier covered transaction entered into by the Contractor with subcontractors.

(E) These certifications are material representations of fact relied upon by the Owner. If it is later determined that the Contractor did not comply with 2 CFR Part 180, subpart C, in addition to the remedies available to the Owner, the State of Florida, the Federal Government may pursue available remedies, including but limited to suspension and/or debarment.

(6) BYRD ANTI-LOBBYING AMENDMENT.

The provisions of this Section apply to contracts valued at \$100,000 or more.

The Contactor certifies, to the best of his or her knowledge and belief, that:

(A) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(B) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(C) The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under

grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

(D) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(7) PROCUREMENT OF RECOVERED MATERIALS

The Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(8) PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(A) The Contractor is prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications

Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(b) Telecommunications or video surveillance services provided by such entities or using such equipment.

(c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(B) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(C) See Public Law 115-232, section 889 for additional information.

(D) See also 2 CFR 200.471.

(9) DOMESTIC PREFERENCES FOR PROCUREMENTS

(A) As appropriate and to the extent consistent with law, the County, given federal funds are being used to fund this Contract, informs the Contractor of the preference, to the greatest extent practicable, for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(B) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products

such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**CERTIFICATION OF COMPLIANCE WITH AMERICAN RESCUE PLAN ACT
REQUIRED CONTRACT CLAUSES**

This certification involves a continuing consultant contract proposed by Brevard County part or all of which work via executed Task Orders will be funded with funds received by Brevard County under the American Rescue Plan Act.

I certify, as the undersigned prospective consultant contractor or subcontractor, that I have read the clauses set forth in "AMERICAN RESCUE PLAN ACT, Contract Clauses required under 2 CFR Part 200 and Appendix II to 2CFR Part 200," (as titled below), understand and agree to the incorporation of the requirements and clauses into the Request for Qualifications and as Special Provisions in the Contract documents, as Attachment C, in any resulting contract which may be executed between the County/Owner.

- (1) VIOLATION OR BREACH OF CONTRACT TERMS**
- (2) EQUAL EMPLOYMENT OPPORTUNITY**
- (3) CONTRACT WORK HOURS AND SAFETY STANDARD ACT**
- (4) CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**
- (5) DEBARMENT AND SUSPENSION**
- (6) BYRD ANTI-LOBBYING AMENDMENT**
- (7) PROCUREMENT OF RECOVERED MATERIALS**
- (8) PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**
- (9) DOMESTIC PREFERENCES FOR PROCUREMENTS**

I agree that I will obtain identical certifications from prospective consultant subcontractors prior to the award of any subcontracts. I agree that I will retain such certifications in my files.



Signature of Authorized Official

Erik Costin, Vice President

Name and Title of Authorized Official – print/type

W&J Construction Corporation

Name of Prospective Contractor – print/type

1005 Viera Blvd, Suite 202 Rockledge, FL 32955

Address of Prospective Contractor – print/type

321.632.7660

Telephone Number of Prospective Contractor – print/type

11/15/2022

Date

59-1091576

EIN of Prospective Contractor – print/type

**ATTACHMENT C
SAMPLE MODEL RELEASE**

PHOTO RELEASE FORM

I, _____ (full legal name of person being photographed), freely and voluntarily, for good and valuable consideration, the receipt of which is acknowledged, give irrevocable right and permission to **[insert name of CONTRACTOR]** and Brevard County with respect to the photographs and video taken, to copyright the same, in its own name or otherwise, to use, re-use, publish, and re- publish, and otherwise reproduce, modify and display the same, in whole or part, individually or in conjunction with other photographs, and in conjunction with other copyrighted matter, in any and all media now or hereafter known, for any commercial use, including but not limited to promotion, art, advertising and trade, publicity, copyright, illustration, publishing, advertising, social media, flyers and web content for any products or services, or other uses as may be determined by **[insert name of CONTRACTOR]** and Brevard County.

This authorization and release inures to the benefit of the legal representatives, licensees and assigns of **[insert name of CONTRACTOR]** and Brevard County. I further release and discharge **[insert name of CONTRACTOR]** and Brevard County from any and all injury incurred during the photography session and from any and all claims and demands, known or unknown, arising out of or in connection with the use of the photographs, including without limitation, any and all claims for libel and/or invasion of privacy.

Payment: I understand there shall be a payment for this release, which is included in the photo session fee.

Royalties: I understand that no royalty, fee, or any other compensation shall become payable to me by reason of such use.

Revocation: I understand that my authorization here may not be revoked.

I further waive any and all rights to review or approve any uses of the images, any written copy, or finished product. I further state that I am of full legal age (eighteen and older), have the right to contract in my own name, and have read and fully understand the terms of this release. This release shall be binding upon me, and my heirs, legal representatives and assigns.

Page 1 of 2 – Photo Release Form

This consent applies to all photos and video taken over the time period _____ to _____.

I agree that my name may be associated as a caption with the images(s) created.

I request that my name NOT be associated with any image created.

Printed Name of Releasee: _____ Date of Birth: _____

Signature of Releasee: _____ Date: _____

Address of Releasee:

Street City State Zip

Witness: _____ Date: _____

If a Minor: I, being the parent or guardian of the above name minor, hereby consent to and join in the foregoing release and consent on behalf of said minor.

Printed Name of Parent/Guardian: _____

Signature of Parent/Guardian: _____

Page 2 of 2 – Photo Release Form

ATTACHMENT D
PUBLIC ENTITIES CRIMES AFFIDAVIT

ATTACHMENT E
CONTRACTOR AFFIDAVIT REGARDING SCRUTINIZED COMPANY LIST

CONTINUING CONSTRUCTION MANAGEMENT (AT RISK) SERVICES
RFQ-6-22-05

CONTRACTOR AFFIDAVIT REGARDING SCRUTINIZED COMPANY LIST

Awarded Contractor shall certify that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S. If the Agreement is for more than \$1,000,000 the Contractor further certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S.

For Contracts of any amount, if the County determines the Contractor submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the County shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the County's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or on a case-by-case basis the County may choose to maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met. For Contracts \$1,000,000 and greater, if the County determines the Contractor submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies with Activities in the Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the County shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the County's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or on a case-by-case basis the County may choose to maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met.

STATE OF FLORIDA

COUNTY OF Brevard

BEFORE ME, the undersigned authority, personally appeared

Erik Costin, who, being by me first duly sworn, made the following statement:

1. The Business address of 1005 Viera Blvd, Ste 202, Rockledge, FL 32955 (name of bidder or contractor) is W&J Construction Corporation.
2. My relationship to W&J Construction Corporation (name of bidder or contractor) is vice president (relationship such as sole proprietor, partner, president, vice president).

3. I understand that "Boycott of Israel" has the same meaning as defined in §215.4725, Florida Statutes, and means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the State Board of Administration to be evidence that a company is participating in a boycott of Israel. The term does not include restrictive trade practices or boycotts fostered or imposed by foreign countries against Israel.

4. I understand that "business operations" means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

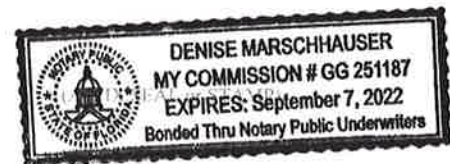
5. XX (name of the bidder or contractor) is not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, or is engaged in a boycott of Israel.

6. _____ (name of the bidder or contractor) is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes.

7. _____ (name of the bidder or contractor) is not engaged in business operations in Cuba or Syria.

est
Signature

Sworn to and subscribed before me in the state and county first mentioned above on the 7 day of July, 2022.



Denise Marschhauser
Notary-Public

My commission expires: 9/7/2022

**ATTACHMENT F
DISCLOSURE FORM FOREIGN INFLUENCE ON CONTRACTS OR GRANTS
HAVING A VALUE OF \$100,000 OR MORE**

CONTINUING CONSTRUCTION MANAGEMENT (AT RISK) SERVICES
RFQ-6-22-05
DISCLOSURE FORM

FOREIGN INFLUENCE ON CONTRACTS OR GRANTS HAVING A VALUE OF \$100,000 OR MORE

Summary of Form: In order for the County to comply with section 286.101, Florida Statutes, all prospective contractors and grant recipients seeking to contract with the County, or receive a grant from the County, where said contract or grant has a value of \$100,000 or more must disclose to the County (1) any current or prior interest of, (2) any contract with, or (3) any grant or gift received from a foreign country of concern (defined as the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, and the Syrian Arab Republic, or an agency or other entity under the significant control of such foreign country of concern) if such interest, contract, or grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous five years. The disclosure is specified below. Within one year before applying for any grant or proposing any Contract, such entity must provide a copy of such disclosure to the Department of Financial Services. Disclosure is not required in certain circumstances, outlined below. A Contract is any agreement for the direct benefit or use of any party to such agreement, including an agreement for the sale of commodities or services. A Gift is any transfer of money or property from one entity to another without compensation. A Grant is a transfer of money for a specified purpose, including a conditional gift. An interest in an entity means any direct or indirect investment in or loan to the entity valued at 5 percent or more of the entity’s net worth or any form of direct or indirect control exerting similar or greater influence on the governance of the entity.

I. SECTION I. Please answer yes or no to each statement below:

YES / NO I AM BIDDING ON A CONTRACT/APPLYING FOR A GRANT WITH A POTENTIAL VALUE UNDER \$100,000. If yes, this disclosure form as been completed. Please sign and date at the bottom.

YES / NO I AM BIDDING ON A CONTRACT/APPLYING FOR A GRANT WITH A POTENTIAL VALUE OF OVER \$100,000. If yes, proceed to the next question.

YES / NO I HAVE MADE A FOREIGN INFLUENCE DISCLOSURE ONLINE WITH THE DEPARTMENT OF FINANCIAL SERVICES. If yes, please proceed to SECTION IV and provide the date of the disclosure, your name and address. Then sign and date at the bottom.

II. SECTION II. Please answer yes or no to the statement below:

YES / NO Bidder/Grantee has (1) a current or prior interest of, any contract with, or any grant or gift received from a foreign country of concern (defined as the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan Regime of Nicolas Maduro, and the Syrian Arab Republic, or an agency or other entity under the significant control of such foreign country of concern); and (2) such interest, contract, or grant or gift has a value of \$50,000 or more; and (3) such interest existed, or such contract or grant or gift was received or in force at any time during the previous five years.

III. SECTION III. If you answered NO to SECTION II, you have completed this form. Please sign/date at the bottom. If you answered YES to SECTION II, then answer YES or NO to the following:

- YES / NO This is a proposal to sell commodities through an online procurement programs established pursuant to section 287.057(22), Florida Statutes.
- YES / NO This is a proposal from an entity that discloses foreign gifts or grants under section 1010.25 or section 286.101(2), Florida Statutes.
- YES / NO This is a proposal from a foreign source that, if granted or accepted, would be disclosed under section 286.101(2) or section 1010.25, Florida Statutes.
- YES / NO This is a proposal from a public or not-for-profit research institution with respect to research funded by any federal Agency.

IV. SECTION IV. If you answered YES to any question in SECTION III, you have completed this form. Please sign/date at the bottom. If you answered NO to all of the questions in SECTION III, then you must make the following disclosures online to the State of Florida Department of Financial Services before the County may contract with you or award you said grant. Please disclose the following:

Date Disclosure of the information below was made by Bidder/Grantee to the State of Florida Department of Financial Services online: _____

Name of Bidder/Grantee: _____

Mailing Address of Bidder/Grantee: _____

Value of the Contract/Grant or Gift: _____

Foreign Country of Concern or the Agency or other entity under the significant

Control of such Foreign country of Concern: _____

Date of Termination of the contract or interest with the Foreign Country of Concern:

Date of Receipt of the Contract/Grant or Gift: _____

Name of the agent or controlled entity that is the source or interest holder: _____

I verify that the information provided on this form is true and correct, and that I am duly authorized to make said binding disclosures on behalf of myself or my Company, as applicable.

Company Name W&J Construction Corporation

Signature:  Erik Costin Date: 7/7/2022

Title: Vice President

STATE OF FLORIDA

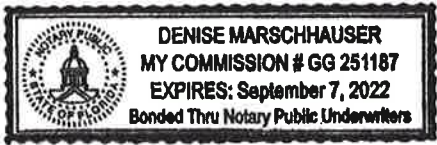
COUNTY OF Brevard

Sworn to and subscribed before me by means of physical presence or online notarization, this 7 day of July, 2022, by (name of person making statement). Erik Costin, VP

Denise Marschhauser

[Notary Seal]

Notary Public



Denise Marschhauser

Name typed, printed or stamped

My Commission Expires: 9/7/2022

Personally Known OR _____ Produced Identification

Type of Identification Produced _____