

SECTION 00530 – EJCDC STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR ON THE BASIS OF A STIPULATED PRICE
South Oslo Road WTP SCADA System Improvements

THIS AGREEMENT (“Agreement” or “Contract”), dated the _____ day of _____ in the year 2021 by and between Indian River County, a political subdivision of the State of Florida (hereinafter called OWNER) and TLC Diversified, Inc. (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 WORK

CONTRACTOR as an independent contractor and not as an employee shall furnish and complete all of the necessary labor, material, and equipment to perform the work as specified or indicated in the Contract Documents and per Indian County Department of Utility Services (IRCDUS) standards. The work is generally described as follows:

Construct electrical and SCADA system improvements, including, but not limited to, installation of new high service pump PLC panel, hardware upgrades to existing Main PLC panel, conduit, wiring and any other items as depicted on the plans and in these specifications to provide a complete and functional system at Indian River County’s South Water Treatment Plant (Oslo).

ARTICLE 2 ENGINEER

The South Oslo Road WTP SCADA System Improvements project has been designed by Kimley-Horn and Associates, Inc., hereinafter called ENGINEER, and who is to act as OWNER’S representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the work in accordance with the Contract Documents.

ARTICLE 3 CONTRACT TIME

3.1 The CONTRACTOR shall be substantially completed with the following timeframe

- (a) Within 30 calendar days from effective date of Notice to Proceed, Contractor shall complete the following tasks:
 - 1. Obtain all necessary permits.
 - 2. Submit shop drawings for all materials and equipment to be utilized on the job.
 - 3. Perform all photographic recording and documentation of conditions prior to construction.
 - 4. Locate all existing utilities in the area of work.
 - 5. Secure approval of shop drawings.
 - 6. Mobilize all labor, equipment, and materials and prepare the site.
 - 7. Notify all utilities and other affected parties prior to initiating construction.

- (b) From 31 calendar days to 150 calendar days from the effective date of Notice to Proceed, the CONTRACTOR shall complete the following tasks:
 - 1. Install all electrical equipment, panel, hardware, conduit, wiring, and

- appurtenant items.
2. Perform all equipment start-ups and field testing.
 3. Restore all disturbed areas to their pre-construction condition.
 4. Correct all deficiencies noted by Engineer.

Completion of all tasks outlined above (i.e., Subparagraphs a) and b) constitutes Substantial Completion.

(c) From 151 calendar days to 180 calendar days from the effective date of Notice to Proceed, the CONTRACTOR shall complete the following tasks:

1. Clean up project area.
2. Remove all equipment and material from project site.
3. Perform contract closeout procedures.
4. Demobilize.

3.2 Completion of all tasks outlined above (i.e., Subparagraphs a, b, and c) constitute Final Completion.

3.3 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the work is not completed within the times specified in Paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER four-hundred and fifty dollars (\$250.00) for each day that expires after the time specified in Paragraph 3.1 for Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER four-hundred and fifty dollars (\$250.00) for each day that expires after the time specified in Paragraphs 3.1 and 3.2 for completion and readiness for final payment.

3.3.1 The CONTRACTOR and OWNER agree that OWNER is authorized to deduct all or any portion of the above-stated liquidated damages due to the Owner from payments due to the Contractor; or, in the alternative, all or any portion of the above-stated liquidated damages may be collected from the Contractor or its Surety or Sureties. These provisions for liquidated damages shall not prevent the OWNER, in case of the CONTRACTOR's default, from terminating the Contractor's right to proceed as provided in this AGREEMENT.

3.3.2 In addition to the above-stated liquidated damages, the CONTRACTOR shall be responsible for reimbursing OWNER to third party consultants in administering the Project beyond the Final Completion date specified in this Agreement, or beyond an approved extension of time granted to CONTRACTOR, whichever date is later.

ARTICLE 4 CONTRACT PRICE

4.1 OWNER shall pay CONTRACTOR for completion of the work in accordance with the Contract Documents in current funds in the amount of \$_____.

ARTICLE 5 PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions and the Contract Documents.

- 5.1 The OWNER shall make progress payments to the CONTRACTOR on the basis of the approved partial payment request as recommended by ENGINEER in accordance with the provisions of the Local Government Prompt Payment Act, Florida Statutes section 218.70 et. seq. The OWNER shall retain five percent (5%) of the payment amount due to CONTRACTOR until final completion and acceptance of all work to be performed by CONTRACTOR under the Contract Documents.
- 5.2 Each request for a progress payment shall contain the CONTRACTOR'S certification. All progress payments will be on the basis of progress of the work measured by the schedule of values established, or in the case of unit price work based on the number of units completed.
- 5.3 Paragraphs 5.1 and 5.2 do not apply to construction services work purchased by the County as OWNER which are paid for, in whole or in part, with federal funds and are subject to federal grantor laws and regulations or requirements that are contrary to any provision of the Local Government Prompt Payment Act. In such event, payment and retainage provisions shall be governed by the applicable grant requirements and guidelines.
- 5.4 ACCEPTANCE AND FINAL PAYMENT: Upon receipt of written notice that the work is ready for final inspection and acceptance, the ENGINEER will promptly make such inspection and when the ENGINEER finds the work acceptable under the terms of the Contract and the Contract fully performed, the ENGINEER will promptly issue a final completion certificate stating that the work provided for in this Contract has been completed, and acceptance by the OWNER under the terms and the conditions thereof is recommended and the entire balance found to be due the CONTRACTOR, will be paid to the CONTRACTOR by the OWNER following County Commission approval of the final Contract payment.
- 5.5 Acceptance of Final Payment as Release. The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER from all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with the work under this Contract and for every act and neglect of the OWNER and others relating to or arising out of the work. Any payment, however, final or otherwise, shall not release the CONTRACTOR or its sureties from any obligations under the Contract Documents or the Payment and Performance Bonds.

ARTICLE 6 INTEREST

Not Applicable.

ARTICLE 7 CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.
- 7.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions, and accepts the determination set forth in Paragraph SC-4.02 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.
- 7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as CONTRACTOR considers necessary for the performance of furnishing of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing underground facilities at or contiguous to the site and assumes responsibility for the accurate location of said underground facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said underground facilities are or will be required by CONTRACTOR in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.04 of the General Conditions.
- 7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- 7.7 Contractor is registered with and will use the Department of Homeland Security's E-Verify system (www.e-verify.gov) to confirm the employment eligibility of all newly hired employees for the duration of this agreement, as required by Section 448.095, F.S. Contractor is also responsible for obtaining proof of E-Verify registration and utilization for all subcontractors.

ARTICLE 8 CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the work consist of the following:

- 8.1 This Agreement (Section 00530)
- 8.2 General Conditions (Section 00700).

- 8.3 Supplementary Conditions (Section 00800).
- 8.4 Notice to Proceed (Sample Provided in Section 00800)
- 8.5 Public Construction Bond (Section 00600)
- 8.6 Certificate(s) of Liability Insurance (Section 00620)
- 8.7 Contractor's Application for Payment (Sample Provided in Section 00800)
- 8.8 Certificate of Substantial Completion (Sample Provided in Section 00800)
- 8.9 Final Release of Lien (Sample Provided in Section 00800)
- 8.10 Technical Specifications bearing the title "South Oslo Road WTP SCADA **System Improvements**"
- 8.11 Drawings Titled "South Oslo Road WTP SCADA System Improvements"
- 8.12 Addendum Number 1.
- 8.13 CONTRACTOR'S Bid (Section 00310).
- 8.14 Bid Bond (Section 00410)
- 8.15 Schedule of Subcontractors (Section 00431).
- 8.16 Certification Regarding Prohibition Against Contracting with Scrutinized Companies (Section 00432).
- 8.17 Disclosure of Relationships (Section 00452).
- 8.18 General Information Required of Bidders (Section 00456).
- 8.19 The following, which may be delivered or issued after the effective date of the Agreement and are not attached hereto: All written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Paragraphs 3.04 of the General Conditions (Samples provided in Section 00800).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in Paragraphs 3.04 of the General Conditions.

ARTICLE 9 MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions, as supplemented by the Supplementary Conditions, will have the meanings indicated in the General Conditions.
- 9.2 It is agreed that the CONTRACTOR shall not assign, transfer, convey, or otherwise dispose of the contract or its right, title, or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous consent of the OWNER and concurred to by the sureties. Any attempted assignment shall be void and may, at the option of the OWNER be deemed an event of default hereunder. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the OWNER who may be a party hereto.
- 9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 The CONTRACTOR shall be properly licensed to practice its trade or trades which are involved in the completion of this Agreement and the work thereunder.
- 9.5 This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this agreement shall

be in Indian River County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.

9.6 The CONTRACTOR shall indemnify and hold harmless the County, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the construction contract.

9.7 Pledge of Credit. The CONTRACTOR shall not pledge the OWNER'S credit or make it a guarantor of payment or surety for any Agreement, debt, obligation, judgment, lien or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation of indebtedness that would impair its ability to fulfill the terms of this Agreement.

9.8. Counterparts. This Agreement may be executed in one or more counterparts, but all such counterparts, when duly executed, shall constitute one and the same Agreement.

9.9. Public Records. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- A. Keep and maintain public records required by the County to perform the service.
- B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.
- D. Upon completion of the contract, 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. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

E. **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 AT:
(772) 226-1424
publicrecords@ircgov.com
Indian River County Office of the County Attorney**

**1801 27th Street
Vero Beach, FL 32960**

F. Failure of the Contractor to comply with these requirements shall be a material breach of this Agreement.

This Agreement will be effective on _____, 2021 (the date the Contract is approved by the Indian River County Board of County Commissioners, which is the Effective Date of the Agreement).

OWNER:

INDIAN RIVER COUNTY

By: _____
Joseph E. Flescher, Chairman

By: _____
Jason E. Brown, County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Dylan Reingold, County Attorney

Jeffrey R. Smith, Clerk of Court and Comptroller

Attest: _____
Clerk of Court and Comptroller
(SEAL)

Designated Representative:
Name: Terry Southard
Title: Utility Operations Manager
Contact Info: (772) 226-3404
terrysouthard@ircgov.com

CONTRACTOR:

By: _____
(Contractor)

(CORPORATE SEAL)

Attest _____

Address for giving notices:

License No. _____
(Where applicable)

Agent for service of process: _____

Designated Representative:
Name: _____
Title: _____
Address: _____

Phone: _____
Facsimile: _____

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)