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## Agreement

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THIS AGREEMENT is by and between INDIAN RIVER COUNTY, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida, (hereinafter called OWNER) and Indian River Docks, LLC (hereinafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### ARTICLE 1 - WORK

1.1 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

- Restoration and modification of existing wood pier, including electrical and fire protection work, using synthetic replacement decking and stainless steel connectors
- Removal of certain deteriorated submerged pilings
- Removal of concrete deck and replace with wood deck east of ice house
- The applicant is also responsible for obtaining Florida Department of Environmental Protection (FDEP) and Army Corps of Engineers (ACOE) permits, as necessary, for the work.

### ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Project Name:	Archie Smith Fish House Dock Restoration
RFP Number:	2018056
Project Address:	1740 N. Indian River Drive, Sebastian, FL

### ARTICLE 3 – TERM AND CONTRACT TIMES

3.1 *Term:* This Agreement shall remain in effect for a term of one (1) year, unless otherwise sooner terminated by mutual consent of the parties.

3.2 *Time of Completion:* Project shall be completed, to include approval by the Building Division 180 days from receipt of the Notice to Proceed.

### ARTICLE 4 - CONTRACT PRICE

4.1 OWNER shall pay CONTRACTOR for completion of the Work an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 4.01.A and summarized in paragraph 4.01.B, below:

- A. For all Work, at the prices stated in CONTRACTOR's Proposal, attached hereto as an exhibit.
- B. THE CONTRACT SUM subject to additions and deductions provided in the Contract Documents:

Numerical Amount: \$186,925.00

Written Amount: One hundred, eighty-six thousand, nine hundred, twenty-five dollars and zero cents

**ARTICLE 5 – PAYMENT PROCEDURES**

5.01 *Progress Payments.*

A. 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 ten percent (10%) of the payment amounts due to the CONTRACTOR until fifty percent (50%) completion of the work. After fifty percent (50%) completion of the work is attained as certified to OWNER by ENGINEER in writing, 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. Pursuant to Florida Statutes section 218.735(8)(b), fifty percent (50%) completion means the point at which the County as OWNER has expended fifty percent (50%) of the total cost of the construction services work purchased under the Bid and Specification Documents, together with all costs associated with existing change orders and other additions or modifications to the construction services work provided under the Contract Documents.

5.02 *Pay Requests.*

A. 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. After fifty percent (50%) completion, and pursuant to Florida Statutes section 218.735(8)(d), the CONTRACTOR may submit a pay request to the County as OWNER for up to one half (1/2) of the retainage held by the County as OWNER, and the County as OWNER shall promptly make payment to the CONTRACTOR unless such amounts are the subject of a good faith dispute; the subject of a claim pursuant to Florida Statutes section 255.05(2005); or otherwise the subject of a claim or demand by the County as OWNER or the CONTRACTOR. The CONTRACTOR acknowledges that where such retainage is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the Contractor shall timely remit payment of such retainage to those subcontractors and suppliers. Pursuant to Florida Statutes section 218.735(8)(c)(2005), CONTRACTOR further acknowledges and agrees that: 1) the County as OWNER shall receive immediate written notice of all decisions made by CONTRACTOR to withhold retainage on any subcontractor at greater than five percent (5%) after fifty percent (50%) completion; and 2) CONTRACTOR will not seek release from the County as OWNER of the withheld retainage until the final pay request.

5.03 Paragraphs 5.01 and 5.02 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.

5.04 *Acceptance of Final Payment as Release.*

A. 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 Agreement 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 this Agreement, the Invitation to Bid or the Public Construction Bond.

**ARTICLE 6 –INDEMNIFICATION**

6.01 The CONTRACTOR shall indemnify and hold harmless the OWNER, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful misconduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of the Work.

**ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS**

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

- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Request for Proposal documents.
- B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions

(surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

- E. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. CONTRACTOR has given OWNER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by OWNER is acceptable to CONTRACTOR.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **ARTICLE 8 - CONTRACT DOCUMENTS**

### **8.1 *Contents***

A. The Contract Documents consist of the following:

- (1) This Agreement (pages 1 to 6, inclusive);
- (2) Notice to Proceed
- (3) Public Construction Bond (pages 1 to 1, inclusive);
- (4) Certificate of Liability Insurance
- (5) Invitation to Bid 2018056
- (6) Addenda (numbers 1 to 3, inclusive);
- (7) CONTRACTOR'S Bid Form (pages 11 to 11);
- (8) Bid Bond;
- (9) Drug Free Workplace Form (pages 12 to 12);
- (10) Affidavit of Compliance (page 13);
- (11) Sworn Statement Under Section 105.08, Indian River County Code, on Disclosure of Relationships (pages 14 to 15, inclusive);

- (12) The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
- a) Written Amendments;
  - b) Work Change Directives;
  - c) Change Order(s).

## ARTICLE 9 – MISCELLANEOUS

### 9.1 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the Invitation to Bid.

### 9.2 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 9.3 *Successors and Assigns*

- A. 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 to all covenants, agreements, and obligations contained in the Contract Documents.

### 9.4 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 9.5 *Venue*

- A. 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 a federal jurisdiction, in the United States District Court for the Southern District of Florida.

### 9.6 *Public Records Compliance*

- A. 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:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) 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.
- (3) 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.
- (4) 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.

**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](mailto:publicrecords@ircgov.com)**

**Indian River County Office of the County Attorney**

**1801 27<sup>th</sup> Street**

**Vero Beach, FL 32960**

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



IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf

This Agreement will be effective on June 19, 2018 (the date the Contract is approved by the Indian River County Board of County Commissioners, which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

INDIAN RIVER COUNTY

INDIAN RIVER DOCKS LLC

By: Peter D O'Bryan  
Peter D. O'Bryan, Chairman

[Signature]  
(Contractor)

By: [Signature]  
Jason E. Brown, County Administrator



(CORPORATE SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]  
Dylan Reingold, County Attorney

Address for giving notices:  
481 AVOCADO AV  
SEBASTIAN FLORIDA  
32958

ATTEST: Jeffrey R. Smith, Clerk of Court and Comptroller

BY: [Signature]  
Deputy Clerk

(SEAL)

Agent for service of process: \_\_\_\_\_

Designated Representative:  
Name: Roland DeBlois  
Title: Chief, Environmental Planning and Code Enforcement  
Address: 1801 27<sup>th</sup> Street, Vero Beach, FL 32960  
Phone: (772) 226-1258  
Email: [rdeblois@ircgov.com](mailto:rdeblois@ircgov.com)

Designated Representative:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

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