

SAMPLE AGREEMENT

Indian River County Solid Waste Disposal District

Indian River County Landfill Segment 3 Cell 2 Expansion, Segment 2 Partial Closure, And Landfill Gas System Expansion

IRC Bid Number 2018025

SECTION 00530 - EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT (“Agreement” or “Contract”), dated _____, 2018 by and between Indian River County Solid Waste Disposal District (SWDD), a special dependent district of Indian River County (IRC), a political subdivision of the State of Florida (“OWNER” or “SWDD”) and Thalle Construction Company, Inc. (“CONTRACTOR”).

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

ARTICLE 1 WORK

1.1 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. The work is generally described as follows:

- A. The Work shall include but is not necessarily limited to the following:
 - 1. Bid Item No. 1. Segment 3 Cell 2 Expansion (Milestone 2):
 - a. Clearing and Grubbing.
 - b. Earthwork, Filling and Grading.
 - c. Cell Double Liner System.
 - d. Leachate Collection System.
 - e. Leachate Detection System.
 - f. Gravity Leachate conveyance piping and manholes.
 - 2. Bid Item No. 2. Segment 2 Partial Closure and Landfill Gas Expansion (Milestone 1):
 - a. Clearing and Grubbing on Landfill to be closed.
 - b. Provide and install closure liner system.
 - c. Stormwater Inlet and downcomer pipes including replacement of existing pipes.
 - d. Velocity reducing stormwater structures.
 - e. Landfill Gas Collection wells and trenches.
 - f. Condensate collection and pumping system including pipes.
 - g. Landfill gas piping system.
 - h. Air compressor and enclosure.
 - i. Electrical connections and compressor instrumentation.
 - 3. Bid Item No. 3. Public Construction Bond and Insurance.

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4. Bid Item No. 4. Mobilization and Demobilization (Milestones 1 and 2).
5. Bid Item No. 5. Water Main Extension and Hydrant (Milestone 2):
 - a. Clearing and grubbing, and excavation.
 - b. Bedding, piping and backfilling.
 - c. Geotechnical testing for compaction.
 - d. Pressure testing, disinfection and testing.
 - e. Provision and installation of fire hydrant.
6. Bid Item No. 6. Leachate Lift Station and Forcemain (Milestone 2):
 - a. Clearing and grubbing, and excavation.
 - b. Bedding, piping and backfilling.
 - c. Geotechnical testing for compaction.
 - d. Pressure testing and acceptance.
 - e. Lift Station Wetwell, coatings, pumps, valves and appurtenances.
 - f. Lift Station Control Panel and Scada System.
 - g. Service water connection, backflow preventer, and line.
 - h. Electrical conduits, duct banks, handholes, and other ancillary components.
7. Bid Item No. 7. Contingency Allowance at OWNER's Discretion.

ARTICLE 2 ENGINEER

- 2.1 The project has been designed by CDM Smith 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 work of Milestone 1 within One Hundred Eighty (180) calendar days from the date of Notice of Proceed, Milestone 2 within Three Hundred Sixty (360) calendar days from the date of Notice to Proceed, in accordance with Paragraph 2.03 of the General Conditions as amended by the Supplementary Conditions, and be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions as amended by the Supplementary Conditions within Three Hundred Ninety (390) calendar days after the issuance of the Notice to Proceed.
- 3.2 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: (a) Nine hundred dollars (\$900.00) for each day that expires after the time specified in Paragraph 3.1 for Substantial Completion of the work for both sections of the project and (b) Six hundred fifty dollars (\$650.00) for each day that expires after the time specified in Paragraph 3.1 for completion and readiness for final payment or use of each section of the project. These two liquidated damage amounts, all items for Milestone 1 and Milestone 2, are independent of each other and may be assessed concurrently and additively if necessary.

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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 \$14,576,600.00 (Base Bid Items 1-6) plus 10% Contingency in the amount of \$1,457,660.00 for a Grand Total Base Bid in the amount of \$16,034,260 (Base Bid Items 1-7). All contingency amounts will require approval on a case-by-case basis for inclusion in the project.

ARTICLE 5 PAYMENT PROCEDURES

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

5.1 Progress Payments. 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 Contract 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.

5.2 Pay Requests. Each request for a progress payment shall be submitted on the application for payment form supplied by OWNER and the application for 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(2017); 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)(2017), 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 the reasons for making the determination; and 2) CONTRACTOR will not seek release from the County as OWNER of the withheld retainage until the final pay request.

5.3 Paragraphs 5.1 and 5.2 do not apply to construction services work purchased by the County/SWDD 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

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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 SWDD Board 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 as amended by the Supplementary 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.

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- 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.

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 Public Construction Bond (Section 00610).
- 8.3 Notice of Award and Notice to Proceed (examples in Section 00800).
- 8.4 General Conditions (Section 00700).
- 8.5 Supplementary Conditions (Section 00800).
- 8.6 Specifications bearing the title "INDIAN RIVER COUNTY LANDFILL SEGMENT 3, CELL 2 EXPANSION, SEGMENT 2 PARTIAL CLOSURE AND LANDFILL GAS SYSTEM EXPANSION" as listed in the table of contents hereof.
- 8.7 Drawings, inclusive with each sheet bearing the following general title: "INDIAN RIVER COUNTY LANDFILL SEGMENT 3, CELL 2 EXPANSION, SEGMENT 2 PARTIAL CLOSURE AND LANDFILL GAS SYSTEM EXPANSION".
- 8.8 Addenda numbers 1 to 4 , inclusive.
- 8.9 CONTRACTOR's Bid Form (Section 00300) and all attachments thereto:
- (a) Certificates of Insurance (included in Section 00800 Supplementary Conditions).
 - (b) Certificate of Compliance with the Florida Trench Safety Act (Section 00480).
 - (c) Schedule of Subcontractors (Section 00450).
 - (d) Disclosure of Relationships (Section 00452).
 - (e) General Information Required for Bidders (Section 00456).
 - (f) Schedule of Alternate Suppliers (Section 00460).
 - (g) Confirmation of a Drug-Free Workplace (Section 00454).
 - (h) Non-Collusive Affidavit (Section 00455).

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Specifications bearing the title “Indian River County Department of Utility Services Water and Wastewater Utility Standards, December 1, 2015”, or the latest version thereof.

8.10 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.

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 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 CONTRACTOR agrees to defend, hold harmless and indemnify the OWNER, including its commissioners, officers, employees, agents and engineers, from all claims, liabilities, damages, losses and expenses, including, but not limited to, reasonable attorney’s fees, to the extent caused by negligence, recklessness, intentional misconduct, breach of this agreement or breach of applicable law by the CONTRACTOR or persons employed or utilized by the CONTRACTOR in the performance of this Agreement. This provision shall survive the termination or expiration of this Agreement. Indemnification hereunder shall be limited to \$5 million per occurrence.

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.

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9.9 Public Records.

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

ARTICLE 10 DIRECT PURCHASE PROCEDURES.

10.1 Administrative guidelines governing the taxability of materials purchased for public works contracts, such as the Project under these Contract Documents, are contained in Rule 12A-1.094, Florida Administrative Code.

10.2 The exemption in Florida Statutes Section 212.08(6) is a general exemption for sales made directly to the government. A determination whether a particular transaction is properly characterized as an exempt sale to a governmental entity or a taxable sale to or use by a contractor shall be based on the substance of the transaction, rather than the form in which the transaction is cast. The determination of whether the substance of a particular transaction is a taxable sale to or use by a contractor or an exempt direct sale to a governmental entity, based on all of the facts and circumstances surrounding the transaction as a whole, is ultimately made by the Florida Department of Revenue.

10.3 The conditions that must be met to satisfy the requirements of Rule 12A-1.094, Florida Administrative Code, and establish that Indian River County SWDD as OWNER rather than the CONTRACTOR is the purchaser of materials, include:

- (1) Direct Purchase Order. Indian River County SWDD as OWNER must execute the purchase orders for the tangible personal property involved in the contract, which must include the County's consumer's certificate of exemption number. The CONTRACTOR may present the County's purchase orders to the vendors of the tangible personal property.
- (2) Passage of Title. The Indian River County SWDD as OWNER must acquire title to and assume liability for the tangible personal property at the point in time when it is delivered to the job site up until the time it is incorporated as real property.
- (3) Direct Invoice. Vendors must directly invoice Indian River County SWDD as OWNER for supplies.
- (4) Direct Payment. Indian River County SWDD as OWNER must directly pay the vendors for the tangible personal property; and direct purchase cost plus all applicable tax will be deducted from CONTRACTOR's lump sum contract amount.

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- (5) Assumption of the Risk of Loss. Indian River County SWDD as OWNER must assume all risk of loss or damage for the tangible personal property involved in the contract, as indicated by the County's acquisition of, or inclusion as the insured party under, insurance on the building materials.
- 10.4 Indian River County SWDD as OWNER desires to comply with the Direct Purchase Procedures set forth in this Article 10 for allowable purchases in an amount in excess of \$5,000 (Five Thousand Dollars). CONTRACTOR agrees to cooperate with OWNER to enable OWNER to comply with the Direct Purchase Procedures set forth in this Article 10 for all such purchases. Whenever the Contract Documents conflict with the direct purchase procedures set forth in this Article 10, this Article 10 shall prevail. OWNER and CONTRACTOR shall coordinate the builder's risk coverage of each party to comply with the Direct Purchase Procedures set forth herein for such purchases.
- 10.5 Upon delivery of OWNER direct purchase materials to the Project site, the CONTRACTOR shall, pursuant to the Contract Documents, inspect, accept delivery of, and store OWNER direct purchase materials pending incorporation into the Project. CONTRACTOR shall forward proof of delivery acceptance to the OWNER's Project Manager. Notwithstanding the transfer of possession of OWNER direct purchase materials to the CONTRACTOR, Indian River County SWDD as OWNER retains title to the OWNER direct purchase materials and the transfer of possession shall be deemed a bailment until the OWNER direct purchase materials are incorporated into the Project.

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IN WITNESS WHEREOF, OWNER AND CONTRACTOR have signed this Agreement the day and year first written above.

This Agreement will be effective on _____, _____.

CONTRACTOR

Thalle Construction Company, Inc.

By: _____

Print Name: _____

Print Title: _____

Attest: _____
(CORPORATE SEAL)

OWNER

Indian River County
Solid Waste Disposal District

By _____
Peter D. O'Bryan, Chairman

Attest: Jeffery R. Smith, Clerk

By _____
Deputy Clerk

Approved By:

Jason E. Brown, County Administrator

Approved as to Form and Legal Sufficiency:

Dylan Reingold, County Attorney

END OF SECTION