

SECTION 00520 – AGREEMENT

ADDENDUM NO. 1

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 _____
(hereinafter called CONTRACTOR).

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

ARTICLE 1 - WORK

- 1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Construction of a pollution removal facility that will receive flows from an adjacent existing County pollution removal facility (Osprey Marsh Algal Turf Scrubber) and the Indian River Farms Water Control District's South Relief Canal. The remainder of the property is a nature preserve with constructed hiking trails.

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: OSPREY ACRES FLOWAY AND NATURE PRESERVE

Bid Number: 2017051

Project Address: 925 5th Street SE, Vero Beach, FL 32962.

ARTICLE 3 – ENGINEER

- 3.01 The Stormwater Division of the Indian River County Public Works Department is hereinafter called the ENGINEER and will 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 the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

- 4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Final Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence to the Contract.

- 4.02 *Days to Achieve Final Completion and Final Payment*

- A. The Work will be fully completed (Final Completion) and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before the 300th day

from the date the Contract Time commences as set forth in the Notice-to-Proceed (Section 00550).

4.03 *Liquidated Damages*

- A. CONTRACTOR and OWNER recognize that time is of the essence for this Agreement and that OWNER will suffer financial loss if the Work is not completed on or before the date specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties 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 \$2,811.00¹ for each calendar day that expires after the date specified in paragraph 4.02 for Final Completion, until the Work is finally complete and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

- 5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 5.01.A and summarized in paragraph 5.01.B, below:

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

Numerical Amount: \$ _____

Written Amount: _____

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. 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.

6.02 *Progress Payments; Retainage*

- A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment at intervals not less than once each month during performance of the Work as provided in paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units

¹ Reference for liquidated damages amount: "Standard Specifications for Road and Bridge Construction", Florida Department of Transportation, July 2017, Section 8-10.2, page 93, for projects of \$2,500,000 but less than \$5,000,000. The actual liquidated damages amount will be based on the actual contract award amount and determined using the referenced Florida Department of Transportation criteria.

completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Progress payments will be made in an amount equal to the percentage indicated below, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:
 - a. Ninety percent (90%) of Work completed (with the balance being retainage). There will be no payment for the cost of materials and equipment not incorporated in the Work but stored on the Project site.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 7 - INDEMNIFICATION

- 7.01 CONTRACTOR shall indemnify OWNER, ENGINEER, and others in accordance with paragraph 6.20 (*Indemnification*) of the General Conditions to the Construction Contract.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

8.01 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 Bidding 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 carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which have been identified as provided in paragraph 4.06 of the General Conditions.
- E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all 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

- F. 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.
- G. 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.
- H. 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.
- I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 00520-1 to 00520-8, inclusive);
 - 2. Section 00605 – Public Construction Bond (pages 00605-1 to 00605-3, inclusive);
 - 3. Section 00700 - General Conditions (pages 00700-1 to 00700-51, inclusive);
 - 5. Specifications as listed in the Table of Contents of the Project Manual;
 - 6. Drawings as listed in the Cover Sheet of the CONSTRUCTION DRAWINGS FOR OSPREY ACRES FLOWAY AND NATURE PRESERVE;
 - 7. Addenda (numbers _____ to _____, inclusive);
 - 8. Exhibits to this Agreement (enumerated as follows):
 - a. Section 00310 – Bid Form (CONTRACTOR's Bid) (pages 00310-1 to 00310-5 and pages 1 of 7 through 7 of 7, inclusive);
 - b. Section 00450 – Qualifications Questionnaire (page 00450-1 to 00450-7, inclusive including ____ attached pages);
 - c. Section 00452 - Sworn Statement Under Section 105.08, Indian River County Code, on Disclosure of Relationships (pages 00452-1 to 00452-2, inclusive);

- d. Section 00454 – Sworn Statement Under the Florida Trench Safety Act (pages 00454-1 to 00454-2, inclusive);
 - e. Section 00458 – List of Subcontractors (page 00458-1);
 - f. Section 00459 – Drug-Free Workplace Certification (page 00459-1)
 - g. Section 00622 – Contractor’s Application for Payment (pages 00622-1 to 00622-5, inclusive);
 - h. Section 00632 – Contractor’s Final Certification of the Work (pages 00632-1 to 00632-2, inclusive);
 - i. Documentation submitted by CONTRACTOR prior to Notice of Award (pages _____ to _____, inclusive);
 - j. Certificates of Insurance as required by the General Conditions.
9. 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).
- B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract 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.

10.03 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.

10.04 *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.

10.05 *Venue*

- A. This Contract 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 Contract 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.

10.06 *Affirmative Steps With Respect to Minority and Women's Businesses*

- A. CONTRACTOR shall take the following affirmative steps to ensure minority business, women's business enterprises and labor surplus area firms are used when possible:
 - 1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
 - 2. Ensuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
 - 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
 - 4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
 - 5. Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

10.07 *Public Records*

- 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.

B. 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

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

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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 _____, 20____ (the date the Contract is approved by the Indian River County Board of County Commissioners, which is the Effective Date of the Agreement).

OWNER:
BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

CONTRACTOR:

By: _____
Joseph E. Flescher, Chairman

By: _____
(Printed name and title)

Approved by BCC _____

Jason Brown, County Administrator

Witnessed by:

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

By: _____
William K. DeBraal, Deputy County Attorney

(Printed name)

ATTEST:

Jeffrey R. Smith, Clerk of Court and Comptroller

Deputy Clerk

* * END OF SECTION * *