

**CONTINUING CONTRACT AGREEMENT
BETWEEN COUNTY AND CONTRACTOR
CONSTRUCTION OF WATER, SEWER AND RECLAIMED WATER LINE
REPLACEMENTS/EXTENSIONS AND MISCELLANEOUS
ANNUAL REQUIREMENTS LABOR CONTRACT
INDIAN RIVER COUNTY BID NO. 2020039**

THIS CONTINUING CONTRACT AGREEMENT for UTILITIES LABOR AND CONSTRUCTION ("Agreement or "Master Agreement"), entered into as of this ____ day of _____, 2020 by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida, ("COUNTY"), and _____, ("CONTRACTOR").

BACKGROUND RECITALS:

A. Through the competitive bid process, the COUNTY has selected CONTRACTOR to provide certain labor services relating to utilities installation and repair ("Services") as more fully set forth in Exhibit 1 (Contractor's Bid Form) attached to this Agreement and made a part hereof by this reference in connection with various utility installations and repairs to COUNTY owned and operated facilities ("Project").

B. As part of the competitive bid process, the COUNTY issued a Request for proposal (2020039) on April 28, 2020.

C. The proposed work consists of various water transmission and distribution, wastewater collection and reclaimed water transmission system improvements as specified in each of the Owner's individual Work Authorizations issued throughout the life of the Contract. The work may include after hours and emergency work. All material (furnished by COUNTY) and all equipment furnished (by CONTRACTOR) and all work performed (by CONTRACTOR) shall be in strict accordance with the Indian River County Department of Utility Services Water & Wastewater Utility Standards dated May 2019, or latest edition, which may be obtained at no cost online from the Indian River County Utilities Department. The work is generally located in Indian River County in the Urban Service Area, although transmission utilities are located outside of this boundary.

D. The CONTRACTOR is willing and able to perform the Services for the COUNTY on the terms and conditions set forth below; and

E. The COUNTY and the CONTRACTOR wish to enter into this Agreement for the Contractor's Services for the Project.

NOW THEREFORE, in accordance with the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. GENERAL.

1.1 All construction services provided by the CONTRACTOR for the COUNTY shall be identified in Work Authorization and performed in a timely, efficient, cost effective manner. Work Authorization shall include a description of services to be performed; a statement of fees; a schedule of deliverables; proposed schedule for compensation and whether compensation is lump sum maximum amount not to

exceed task based, or any combination of the foregoing; a budget establishing the amount of compensation to be paid with sufficient detail so as to identify all of the various elements of costs; and any other additional instructions or provisions relating to the specific Services authorized pursuant to each Purchase Order that does not conflict with the terms of this Agreement.

1.2 Whenever the term "Work Authorization" is used herein, it is intended to mean that formal document that is dated; serially numbered; and executed by both the COUNTY and the CONTRACTOR by which the COUNTY accepts Contractor's proposal for specific services and CONTRACTOR indicates a willingness to perform such specific services for the terms and under the conditions specified in this Agreement. Each Purchase Order must be fully executed by the COUNTY.

1.3 Services related to any individual Work Authorization which would increase, decrease or which are otherwise outside the scope of Services or level of effort contemplated by a Work Authorization shall be Services for which the Contractor must obtain the prior written approval of the COUNTY as provided by this Agreement. All terms for the performance of such Services must be agreed upon in a written document prior to any deviation from the terms of a Work Authorization, and when properly authorized and executed by both the CONTRACTOR and the COUNTY shall become an amendment to the Work Authorization or a new Work Authorization, at the sole option of the COUNTY.

1.4 A Work Authorization shall not give rise to any contractual rights until it meets the foregoing requirements. Each specific Work Authorization, as approved by the COUNTY, shall be an addendum to this Agreement. Nothing contained in any Work Authorization shall conflict with the terms of this Agreement, and the terms of this Agreement shall be deemed to be incorporated in each individual Work Authorization as if fully set forth therein.

1.5 It is the intent of the COUNTY to enter into Agreements with two or more qualified contractors. Work Authorizations will be issued to Contractors based on the availability, expertise, and other special requirements as determined by the Engineers for work required for that specific project. In the event the CONTRACTOR declines a Work Authorization due to workload, the Work Authorization will be offered to the other awarded CONTRACTOR. No representation or guarantee is made by Indian River County as to the minimum or maximum dollar value, volume of work, or type of work, if any, that CONTRACTOR will receive during the term of this Agreement.

1.6 The Background Recitals are true and correct and form a material part of this Agreement.

2. **COUNTY OBLIGATIONS.**

2.1 The COUNTY will provide the CONTRACTOR with a copy of any preliminary data or reports available as required in connection with the work to be performed under this Agreement, together with all available drawings, surveys, right-of-way maps, and other documents in the possession of the COUNTY pertinent to a Project. The CONTRACTOR shall satisfy itself as to accuracy of any data provided. The CONTRACTOR is responsible for bringing to the COUNTY's attention, for the COUNTY's resolution, material inconsistencies or errors in such data that come to the CONTRACTOR's attention.

2.2 The COUNTY shall arrange for access to, and make provisions for the CONTRACTOR to enter upon public and private property (where required) as necessary for the CONTRACTOR to perform its Services, upon the timely written request of CONTRACTOR to COUNTY.

2.3 The COUNTY shall promptly execute all permit applications necessary to the Project.

2.4 The COUNTY shall examine any and all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the CONTRACTOR, and render, in writing, decisions pertaining thereto within a reasonable time.

2.5 Services furnished under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The CONTRACTOR shall be and shall remain liable in accordance with all applicable laws for all damages to the COUNTY caused by the negligent performance by the CONTRACTOR of any of the Services furnished under this Agreement.

2.6 The COUNTY reserves the right to appoint one or more Project Managers for the specific Services in connection with any Work Authorization, however there will be only one Project Manager per Work Authorization. The Project Manager shall: (a) act as the COUNTY's agent with respect to the Services rendered hereunder; (b) transmit instructions to and receive information from the CONTRACTOR; (c) communicate the COUNTY's policies and decisions to the CONTRACTOR regarding the Services; and (d) determine, initially, whether the CONTRACTOR is fulfilling its duties, responsibilities, and obligations hereunder.

2.7 The COUNTY shall give prompt written notice to the CONTRACTOR whenever the COUNTY observes or otherwise becomes aware of any development that affects the timing or delivery of the CONTRACTOR's Services. If the CONTRACTOR has been delayed in completing its Services through no fault or negligence of either the CONTRACTOR or any Subcontractor, and, as a result, will be unable to perform fully and satisfactorily under the provisions of this Agreement, then the CONTRACTOR shall promptly notify the Project Manager. In the COUNTY's sole discretion, and upon the submission to the COUNTY of evidence of the causes of the delay, the Work Authorization shall be modified in writing as set forth in this Agreement, subject to the COUNTY'S rights to change, terminate, or stop any or all of the Services at any time in accordance with this Agreement.

2.8 The CONTRACTOR shall not be considered in default for a failure to perform if such failure arises out of causes reasonably beyond the CONTRACTOR's control and through no fault or negligence of the CONTRACTOR. The parties acknowledge that adverse weather conditions, acts of God, or other unforeseen circumstances of a similar nature, may necessitate modifications to this Agreement. If such conditions and circumstances do in fact occur, then the COUNTY and CONTRACTOR shall mutually agree, in writing, to the modifications to be made to this Agreement.

3. **RESPONSIBILITIES OF THE CONTRACTOR.**

3.1 The CONTRACTOR agrees to perform all necessary utilities labor and construction services in connection with the assigned Project(s) as set forth in the Work Authorizations and in this Agreement.

3.2 The CONTRACTOR will endeavor not to duplicate any previous work done on any Project. Before execution of a Work Authorization, the CONTRACTOR shall consult with the COUNTY to clarify and define the COUNTY's requirements for the Project.

3.3 The CONTRACTOR agrees to complete the Project within the time frame specified in the Work Authorization.

3.4 The CONTRACTOR will maintain an adequate staff of qualified personnel.

3.5 The CONTRACTOR will comply with all present and future federal, state, and local laws, rules, regulations, policies, codes, and guidelines applicable to the Services performed under this Agreement.

3.6 The CONTRACTOR, as a part of the consideration hereof, does hereby covenant and agree that: (1) in connection with the furnishing of Services to the COUNTY hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to the services to be performed by CONTRACTOR under this Agreement on the grounds of such person's race, color, creed, national origin, religion, physical disability, age or sex; and (2) the CONTRACTOR shall comply with all existing requirements concerning discrimination imposed by any and all applicable local, state, and federal rules, regulations, or guidelines, as such rules, regulations, or guidelines may be from time to time amended.

3.7 The CONTRACTOR shall, during the entire term of this Agreement, procure and keep in full force, effect, and good standing any and all necessary licenses, registrations, certificates, permits, and any and all other authorizations as are required by local, state, or federal law, in order for the CONTRACTOR to render its Services as described in this Agreement. The CONTRACTOR shall also require all Subcontractors to comply by contract with the provisions of this section.

3.8 The CONTRACTOR will prepare all necessary sketches and completed application forms to accompany the COUNTY's applications for any required federal, state, or local permits.

3.9 The CONTRACTOR will cooperate fully with the COUNTY in order that all work may be properly scheduled and coordinated.

3.10 The CONTRACTOR will cooperate and coordinate with other COUNTY Contractors, as directed by the COUNTY.

3.11 The CONTRACTOR shall report the status of the Services under this Agreement to the COUNTY Project Manager upon request and hold all drawings, calculations and related work open to the inspection of the COUNTY Project Manager or his authorized agent at any time, upon reasonable request.

3.12 All documents, reports, tracings, plans, specifications, field books, survey notes and information, maps, contract documents, and other data developed by the CONTRACTOR for the purpose of this Agreement, are and shall remain the property of the COUNTY. The foregoing items will be created, maintained, updated, and provided in the format specified by the COUNTY. When all work contemplated under this Agreement is complete, all of the above data shall be delivered to the COUNTY Project Manager.

3.13 The CONTRACTOR agrees to maintain complete and accurate books and records ("Books"), in accordance with sound accounting principles and standards for all Services, costs, and expenditures under this Agreement. The Books shall identify the Services rendered during each month of the Agreement and the date and type of each Project-related expense. The COUNTY shall have the right, at any reasonable time and through any of its designated agents or representatives, to inspect and audit the Books for the purpose of verifying the accuracy of any invoice. The CONTRACTOR shall retain the Books, and make them available to the COUNTY as specified above, until the later of three (3) years after the date of termination of this Agreement, or such longer time if required by any federal, state, or other governmental law, regulation, or grant requirement.

3.15 The CONTRACTOR shall not assign or transfer any work under this Agreement without the prior written consent of the COUNTY. When applicable and upon receipt of such consent from the COUNTY, the CONTRACTOR shall cause the names of the firms responsible for the major portions of each separate specialty of the work to be inserted on the reports or other data.

4. **TERM OF AGREEMENT.**

4.1 This Agreement shall remain in effect for a term of two (2) years, unless otherwise sooner terminated as provided herein. The Initial Term may be extended by mutual consent of the parties hereto for a maximum two additional one-year terms.

4.2 The time for completion of each Project shall be defined in the Work Authorization.

5. **COMPENSATION.**

5.1 Work Authorizations that are less than \$100,000.00 may not require a Public Construction Bond; however, pursuant to The Code of Indian River County, Indian River County as Owner shall make only one payment for the entire amount of the related applicable Work Authorization when the terms of the related applicable Work Authorization have been fulfilled. Upon a determination of satisfactory completion, the COUNTY Project Manager will authorize payment to be made. All payments for services shall be made to the CONTRACTOR by the COUNTY in accordance with the Local Government Prompt Payment Act, as may be amended from time to time (Section 218.70, Florida Statutes, et seq.).

5.2 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 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 Work Authorization.

6. **INSURANCE AND INDEMNIFICATION.**

6.1 The Contractor shall not commence work until they have obtained all the insurance required under this section, and until such insurance has been approved by the County, nor shall the contractor allow any subcontractor to commence work until the subcontractor has obtained the insurance required for a contractor herein and such insurance has been approved unless the subcontractor's work is covered by the protections afforded by the Contractor's insurance.

6.2 The Contractor shall procure and maintain worker's compensation insurance to the extent required by law for all their employees to be engaged in work under this contract. In case any employees are to be engaged in hazardous work under this contract and are not protected under the worker's compensation statute, the Contractor shall provide adequate coverage for the protection of such employees.

6.3 The Contractor shall procure and maintain broad form commercial general liability insurance (including contractual coverage) and commercial automobile liability insurance in amounts not less than shown below. The County shall be an additional named insured on this insurance on this insurance with respect to all claims arising out of the operations or work to be performed.

<p>Commercial General (Public) Liability, other than Automobile</p> <p>\$1,000,000.00 Combined single limit for Bodily Injury and Property Damage</p>	<p>Commercial General</p> <p>A. Premises / Operations</p> <p>B. Independent Contractors</p> <p>C. Products / Completed Operations</p> <p>D. Personal Injury</p> <p>E. Contractual Liability</p> <p>F. Explosion, Collapse, and Underground Property Damage</p>
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<p>Automobile</p> <p>\$1,000,000.00 Combined single limit Bodily Injury and Damage Liability</p>	<p>A. Owner Leased Automobiles</p> <p>B. Non-Owned Automobiles</p> <p>C. Hired Automobiles</p> <p>D. Owned Automobiles</p>
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6.4 The Contractor shall furnish the County a certificate of insurance in a form acceptable to the County for the insurance required. Such certificate or an endorsement provided by the contractor must state that the County will be given thirty (30) days written notice prior to cancellation or material change in coverage. Copies of an endorsement-naming County as Additional Insured must accompany the Certificate of Insurance.

6.5 CONTRACTOR shall include all Subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to all of the requirements stated herein.

6.6 The COUNTY, by and through its Risk Manager, reserves the right periodically to review any and all policies of insurance and to reasonably adjust the limits of coverage required hereunder, from time to time throughout the term of this Agreement. In such event, the COUNTY shall provide the CONTRACTOR with separate written notice of such adjusted limits and CONTRACTOR shall comply within thirty (30) days of receipt thereof. The failure by CONTRACTOR to provide such additional coverage shall constitute a default by CONTRACTOR and shall be grounds for termination of this Agreement by the COUNTY.

6.7 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 attorneys' fees, arising out of or related to the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of this Agreement.

7. **TERMINATION.**

7.1 This Agreement may be terminated: (a) by the COUNTY, for any reason, upon thirty (30) days' prior written notice to the CONTRACTOR; or (b) by the CONTRACTOR, for any reason, upon thirty (30) days' prior written notice to the COUNTY; or (c) by the mutual Agreement of the parties; or d) as may otherwise be provided below. In the event of the termination of this Agreement, any liability of one party to the other arising out of any Services rendered, or for any act or event occurring prior to the termination, shall not be terminated or released.

7.2 Termination for Cause The occurrence of any of the following shall constitute a default by CONTRACTOR and shall provide the COUNTY with a right to terminate this Contract in accordance with this Article, in addition to pursuing any other remedies which the COUNTY may have under this Contract or under law:

- (1) if in the COUNTY's opinion CONTRACTOR is improperly performing work or violating any provision(s) of the Contract Documents;
- (2) if CONTRACTOR neglects or refuses to correct defective work or replace defective parts or equipment, as directed by the Engineer pursuant to an inspection;
- (3) if in the COUNTY's opinion CONTRACTOR's work is being unnecessarily delayed and will not be finished within the prescribed time;
- (4) if CONTRACTOR assigns this Contract or any money accruing thereon or approved thereon; or
- (5) if CONTRACTOR abandons the work, is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for CONTRACTOR or for any of his property.
- (6) CONTRACTOR submits a false invoice to the COUNTY.

7.3 COUNTY shall, before terminating the Contract for any of the foregoing reasons, notify CONTRACTOR in writing of the grounds for termination and provide CONTRACTOR with ten (10) calendar days to cure the default to the reasonable satisfaction of the COUNTY. If the CONTRACTOR fails to correct or cure within the time provided, COUNTY may terminate this Contract by notifying CONTRACTOR in writing. Upon receiving such notification, CONTRACTOR shall immediately cease all work hereunder and shall forfeit any further right to possess or occupy the site or any materials thereon; provided, however, that the COUNTY may authorize CONTRACTOR to restore any work sites.

7.4 The CONTRACTOR shall be liable for:

- (1) any new cost incurred by the COUNTY in soliciting bids or proposals for and letting a new contract; and
- (2) the difference between the cost of completing the new contract and the cost of completing this Contract;
- (3) any court costs and attorney's fees associated with any lawsuit undertaken by COUNTY to enforce its rights herein.

7.5 Termination for Convenience COUNTY may at any time and for any reason terminate CONTRACTOR's services and work for COUNTY's convenience. Upon receipt of notice of such termination CONTRACTOR shall, unless the notice directs otherwise, immediately discontinue the work and immediately cease ordering of any materials, labor, equipment, facilities, or supplies in connection with the performance of this Contract. Upon such termination Contractor shall be entitled to payment only as follows:

- (1) the actual cost of the work completed in conformity with this Contract and the specifications; plus,
- (2) such other costs actually incurred by CONTRACTOR as are permitted by the prime contract and approved by the COUNTY.

Contractor shall not be entitled to any other claim for compensation or damages against the County in the event of such termination.

7.6. TERMINATION IN REGARDS TO F.S. 287.135: TERMINATION IN REGARDS TO F.S. 287.135: CONTRACTOR certifies that it and those related entities of CONTRACTOR as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, CONTRACTOR certifies that it and those related entities of CONTRACTOR as defined by Florida law are 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 Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

COUNTY may terminate this Contract if CONTRACTOR is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

COUNTY may terminate this Contract if CONTRACTOR, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

8. MISCELLANEOUS PROVISIONS.

8.1 Independent Contractor. It is specifically understood and acknowledged by the parties hereto that the CONTRACTOR or employees or Subcontractors of the Contractor are in no way to be considered employees of the COUNTY, but are independent contractors performing solely under the terms of the Agreement and not otherwise.

8.2 Request for proposal. It is specifically understood and acknowledged by the parties hereto that all of the requirements set forth in the Request for proposal dated April 28, 2020 (including addenda ___ through ___) shall be incorporated herein.

8.3 Merger; Modification. Except as set forth in Section 8.2 above, this Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings of any nature whatsoever concerning the subject matter of the Agreement that are not contained in this document. Accordingly, it is agreed that no

deviation from the terms hereof shall be predicated upon any prior or contemporaneous representations or agreements, whether oral or written. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by the CONTRACTOR and the COUNTY.

8.4 Governing Law; Venue. This Agreement, including all attachments hereto, shall be construed according to 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.

8.5 Remedies; No Waiver. All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu or exclusive of each other or of any other remedy available to either party, at law or in equity. Each right, power and remedy of the parties provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. The failure of either party to insist upon compliance by the other party with any obligation, or exercise any remedy, does not waive the right to so in the event of a continuing or subsequent delinquency or default. A party's waiver of one or more defaults does not constitute a waiver of any other delinquency or default. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall bear its own costs.

8.6 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

8.7 Availability of Funds. The obligations of the COUNTY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioners of Indian River County.

8.8 No Pledge of Credit. The CONTRACTOR shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness.

8.9 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:

8.9.1 Keep and maintain public records that ordinarily and necessarily would be required by the COUNTY in order to perform the service.

8.9.2 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.

8.9.3 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.

8.9.4 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.

8.9.5 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

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

8.10 Notices: Any notice, request, demand, consent, approval, or other communication required or permitted by this Agreement shall be given or made in writing and shall be served, as elected by the party giving such notice, by any of the following methods: (a) Hand delivery to the other party; (b) Delivery by commercial overnight courier service; or (c) Mailed by registered or certified mail (postage prepaid), return receipt requested at the addresses of the parties shown below:

County: Indian River County
Attn: John Boyer, P.E.
1801 27th Street
Vero Beach, FL 32960-3365

Contractor:

Notices shall be effective when received at the address as specified above. Facsimile transmission is acceptable notice effective when received, provided, however, that facsimile transmissions received (i.e., printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next day that is not a weekend day or a holiday. The original of the notice must additionally be mailed. Either party may

change its address, for the purposes of this section, by written notice to the other party given in accordance with the provisions of this section.

8.11 Survival. Except as otherwise expressly provided herein, each obligation in this Agreement to be performed by CONTRACTOR shall survive the termination or expiration of this Agreement.

8.12 Construction. The headings of the sections of this Agreement are for the purpose of convenience only, and shall not be deemed to expand, limit, or modify the provisions contained in such Sections. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arm's-length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsman shall be inapplicable to this Agreement

8.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy and all of which shall constitute but one and the same instrument.

8.14 Sovereign Immunity. Nothing in this Agreement is intended to, or shall be interpreted to, constitute a waiver or limitation of the COUNTY's sovereign immunity.

This Agreement may be terminated: (a) by the COUNTY, for any reason, upon thirty (30) days' prior written notice to the CONTRACTOR; or (b) by the CONTRACTOR, for any reason, upon thirty (30) days' prior written notice to the COUNTY; or (c) by the mutual Agreement of the parties; or d) as may otherwise be provided below. In the event of the termination of this Agreement, any liability of one party to the other arising out of any Services rendered, or for any act or event occurring prior to the termination, shall not be terminated or released.

9. FEDERAL CLAUSES

9.1 COUNTY and CONTRACTOR will adhere to the following, as applicable to this work [delete any clauses that are not applicable]:

9.2 Equal Employment Opportunity During the performance of this contract, the contractor agrees as follows:

9.2.1 The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, 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.

9.2.2 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 considerations for employment without regard to race, color, religion, sex, or national origin.

9.2.3 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.

9.2.4 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.

9.2.5 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.

9.2.6 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 as 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.

9.2.7 The contractor 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 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 a 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.

9.3 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)

9.3.1 Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work

is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

9.3.2 Withholding. COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary

to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the COUNTY may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

9.3.3 Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Emergency Management Agency (FEMA) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to FEMA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to FEMA if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to FEMA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

9.3.4 Apprentices and trainees—(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the

applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

9.3.5 Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

9.3.6 Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

9.3.7 Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

9.3.8 Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9.3.9 Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts

5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

9.3.10 Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

9.4 Copeland "Anti-Kickback" Act.

9.4.1 Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

9.4.2 Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

9.4.3 Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

9.5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)

9.5.1 Overtime requirements. 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 in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

9.5.2 Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

9.5.3 Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor

for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

9.5.4 Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

9.6 Clean Air Act

9.6.1 The contractor 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.

9.6.2 The contractor agrees to report each violation to the County, and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

9.6.3 The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

9.7 Federal Water Pollution Control Act:

9.7.1 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 et seq.

9.7.2 The contractor agrees to report each violation to the County, and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

9.7.3 The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

9.8 Energy Policy and Conservation Act

9.8.1 The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

9.9 Debarment and Suspension

9.9.1 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 contractor is required to verify that none of the contractor, 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).

9.9.2 The contractor 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.

9.9.3 This certification is a material representation of fact relied upon by Indian River County. If it is later determined that the contractor 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 the State of Florida and Indian River County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

9.9.4 The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract

that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9.10. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended))

9.1 Contractors 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 of 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.

9.11 Procurement of Recycled/Recovered Materials

9.11.1 In the performance of this contract, the Contractor 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.

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

9.12. Access to Records

9.12.1 The contractor agrees to provide Indian River County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

9.12.2 The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

9.12.3 The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

9.13 DHS Seal, Logo, and Flags

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

9.14 Compliance with Federal Law, Regulations, and Executive Orders CONTRACTOR acknowledges that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

9.15 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.

9.16 Program Fraud and False or Fraudulent Statements or Related Act The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

9.17 Affirmative Steps 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.

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

This Agreement will be effective on _____, 20____ (the date the Agreement is approved by the Indian River County Board of County Commissioners, which is the Effective Date of the Agreement).

COUNTY:

INDIAN RIVER COUNTY _____

By: _____
Susan Adams, 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: _____
Deputy Clerk

(SEAL)

Designated Representative:

Name:
Title:
Address:
Phone
Email

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: _____
Email: _____

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