

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

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

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

ARTICLE 1 WORK

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

Furnish all labor and materials necessary to construct the improvements to the existing South Oslo Road Water Treatment Plant in Indian River County, Florida, including the following but not limited to the work listed herein: site preparation, demolition, drainage improvements, paving, grading, miscellaneous yard and process piping improvements, feedwater pump motor replacement, transfer pump motor replacement, four (4) 1.875 mgd nanofiltration trains, two (2) new high service pumps, chemical piping replacement, electrical equipment, instrumentation, valves, piping, WTP and wellfield PLC & SCADA system equipment, process piping trenches, painting and coatings; and all accessory items to provide a complete operating system as depicted in these documents. Additive alternates may or may not be included in whole or individually and is at the Owners full discretion.

ARTICLE 2 ENGINEER

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

ARTICLE 3 CONTRACT TIME

3.1 The CONTRACTOR shall be substantially completed with the following timeframe

- (a) Within 60 calendar days from effective date of Notice to Proceed, Contractor shall complete the following tasks:
 - 1. Obtain all necessary permits.
 - 2. Submit shop drawings for all materials and equipment to be utilized on the job.
 - 3. Perform all photographic recording and documentation of conditions prior to construction.
 - 4. Locate all existing utilities in the area of work.
 - 5. Secure approval of shop drawings.
 - 6. Mobilize all labor, equipment, and materials and prepare the site.
 - 7. Notify all utilities and other affected parties prior to initiating construction.

(b) From 61 calendar days to 760 calendar days from the effective date of Notice to Proceed, the CONTRACTOR shall complete the following tasks:

1. Furnish/Install/Construct all civil, mechanical, structural, plumbing, electrical equipment, instrumentation, and appurtenant items.
2. Successfully complete all equipment start-ups and field testing in accordance with the technical specifications.
3. Successfully complete all water quality sampling and testing in accordance with the technical specifications.
4. Coordinate with ENGINEER to obtain required regulatory clearances to place new equipment into operation.
3. Restore all disturbed areas to their pre-construction condition.
4. Correct all deficiencies noted by Engineer.

Completion of all tasks outlined above (i.e., Subparagraphs a) and b) constitutes Substantial Completion. CONTRACTOR is herein notified that Substantial Completion requires beneficial use of all improvements including new and rehabilitated equipment.

(c) From 760 calendar days to 820 calendar days from the effective date of Notice to Proceed, the CONTRACTOR shall complete the following tasks:

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

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

3.3 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the work is not completed within the times specified in Paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER seven-hundred and fifty dollars (\$750.00) for each day that expires after the time specified in Paragraph 3.1 for Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER seven-hundred and fifty dollars (\$750.00) for each day that expires after the time specified in Paragraphs 3.1 and 3.2 for completion and readiness for final payment.

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

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

ARTICLE 4 CONTRACT PRICE

- 4.1 OWNER shall pay CONTRACTOR for completion of the work in accordance with the Contract Documents in current funds in the amount of \$10,659,102.00.

ARTICLE 5 PAYMENT PROCEDURES

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

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

ARTICLE 6 INTEREST

Not Applicable.

ARTICLE 7 CONTRACTOR'S REPRESENTATIONS

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

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

ARTICLE 8 CONTRACT DOCUMENTS.

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

- 8.1 This Agreement (Section 00530)
- 8.2 General Conditions (Section 00700).
- 8.3 Supplementary Conditions (Section 00800).
- 8.4 Department of Labor General Decision Number: FL20210209 05/28/2021
- 8.5 Notice to Proceed (Sample Provided in Section 00800)
- 8.6 Public Construction Bond (Section 00600)
- 8.7 Certificate(s) of Liability Insurance (Section 00620)
- 8.8 Contractor's Application for Payment (Sample Provided in Section 00800)
- 8.9 Certificate of Substantial Completion (Sample Provided in Section 00800)
- 8.10 Final Release of Lien (Sample Provided in Section 00800)
- 8.11 Technical Specifications bearing the title "South Oslo Road WTP Improvements"
- 8.12 Drawings Titled "South Oslo Road WTP Improvements"
- 8.13 Addenda numbers 1 to 4, inclusive.
- 8.14 CONTRACTOR'S Bid (Section 00310).
- 8.15 Bid Bond (Section 00410)
- 8.16 Schedule of Subcontractors (Section 00431).
- 8.17 Certification Regarding Prohibition Against Contracting with Scrutinized Companies (Section 00432).
- 8.18 Disclosure of Relationships (Section 00452).
- 8.19 Sworn Statement under the Florida Trench Safety Act (Section 00454).
- 8.20 General Information Required of Bidders (Section 00456).
- 8.21 Certification Regarding Lobbying
- 8.22 The following, which may be delivered or issued after the effective date of the Agreement and are not attached hereto: All written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Paragraphs 3.04 of the General Conditions (Samples provided in Section 00800).

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

ARTICLE 9 MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions, as supplemented by the Supplementary Conditions, will have the meanings indicated in the General Conditions.
- 9.2 It is agreed that the CONTRACTOR shall not assign, transfer, convey, or otherwise dispose of the contract or its right, title, or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous consent of the OWNER and concurred to by the sureties. Any attempted assignment shall be void and may, at the option of the OWNER be deemed an event of default hereunder. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the OWNER who may be a party hereto.

- 9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 The CONTRACTOR shall be properly licensed to practice its trade or trades which are involved in the completion of this Agreement and the work thereunder.
- 9.5 This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this agreement shall be in Indian River County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.
- 9.6 The CONTRACTOR shall indemnify and hold harmless the County, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the construction contract.
- 9.7 Pledge of Credit. The CONTRACTOR shall not pledge the OWNER'S credit or make it a guarantor of payment or surety for any Agreement, debt, obligation, judgment, lien or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation of indebtedness that would impair its ability to fulfill the terms of this Agreement.
- 9.8. Counterparts. This Agreement may be executed in one or more counterparts, but all such counterparts, when duly executed, shall constitute one and the same Agreement.
- 9.9. Public Records. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:
- A. Keep and maintain public records required by the County to perform the service.
 - B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
 - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.
 - D. Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

- E. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:
(772) 226-1424
publicrecords@ircgov.com
Indian River County Office of the County Attorney
1801 27th Street
Vero Beach, FL 32960**
- F. Failure of the Contractor to comply with these requirements shall be a material breach of this Agreement.

ARTICLE 10 – FEDERAL CLAUSES

10.01 OWNER and CONTRACTOR will adhere to the following, as applicable to this work:

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

(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.

(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.

(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.

(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.

(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.

(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.

(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.

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

(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.

(2) Withholding. OWNER 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 OWNER 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.

(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.

(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.

(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.

(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.

(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.

(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) 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.

(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.

C. Compliance with the Copeland "Anti-Kickback" Act.

(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.

(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.

(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.

D. Compliance with the Contract Work Hours and Safety Standards Act:

(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.

(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.

(3) Withholding for unpaid wages and liquidated damages. The OWNER 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.

(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.

E. Rights to Inventions Made Under a Contract or Agreement. [Not Applicable] See Appendix II of Part 200, if needed.

F. Clean Air Act:

(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.

(2) The contractor agrees to report each violation to the OWNER and understands and agrees that the OWNER will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(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.

G. Federal Water Pollution Control Act:

(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.

(2) The contractor agrees to report each violation to the OWNER and understands and agrees that the OWNER will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(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.

H. Debarment and Suspension

(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).

(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.

(3) This certification is a material representation of fact relied upon by OWNER. 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 OWNER, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(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.

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

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 who in turn will forward the certification(s) to the awarding agency.

J. Procurement of Recycled/Recovered Materials:

(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.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

K. Access to Records: The following access to records requirements apply to this contract:

(1) The contractor agrees to provide OWNER, the State of Florida, 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.

(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.

(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.

(4) In compliance with the Disaster Recovery Act of 2018, the OWNER and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

L. 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.

M. Compliance with Federal Law, Regulations, and Executive Orders: This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, and federal policies, procedures, and directives.

N. 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.

O. Program Fraud and False or Fraudulent Statements or Related Acts: The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

Q. 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.

R. Domestic Preference for Procurement: In accordance with 2 CFR 200.322, Owner has a preference for the purchase, acquisition or use of goods, products or materials produced in the United States (including, but not limited to iron, aluminum, steel, cement and other manufactured products), to the maximum extent practicable.

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This Agreement will be effective on June 15, 2021 (the date the Contract is approved by the Indian River County Board of County Commissioners, which is the Effective Date of the Agreement).

OWNER:

INDIAN RIVER COUNTY

By: _____
Joseph E. Flescher, Chairman

By: _____
Jason E. Brown, County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Dylan Reingold, County Attorney

Jeffrey R. Smith, Clerk of Court and Comptroller

Attest: _____
Clerk of Court and Comptroller
(SEAL)

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

CONTRACTOR:

By: _____
(Contractor)

(CORPORATE SEAL)

Attest _____

Address for giving notices:

License No. _____
(Where applicable)

Agent for service of process: _____

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

Phone: _____
Facsimile: _____

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