

Sample Agreement

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

ARTICLE 1 – WORK AND PROJECT

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

This project consists of temporarily relocating portable cubicle workstations, the demolition and removal of all existing vinyl flooring including existing vinyl wall base. To clean and prepare the existing concrete floor with the intention of furnishing and installing a floor leveler as needed for installing a glued in place Luxury Vinyl Tile (LVT).

Provide moisture testing of existing concrete floor prior to installation. To furnish and install approximately 3,400 SF of Luxury Vinyl Tile flooring with the proper manufacturer’s adhesive. To furnish and install new 4” vinyl wall base (with toe). After the new floor installation is completed, return and secure all cubicles and workstations to their previous locations. Contractor is responsible for applying for and obtaining the Building Permit.

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

Project Name: **Indian River County Tax Collector Floor Replacement (IRC-2411)**

Bid Number: 2024057

Project Address: 1800 27th Street, Building “B”, Vero Beach, FL 32960

ARTICLE 2 – TERM

N/A

ARTICLE 3 - CONTRACT TIMES

3.01 Time of the Essence

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the specifications are of the essence of the Agreement.

3.02 Days to Achieve Substantial Completion, Final Completion and Final Payment

The Work will be completed and ready for final payment on or before the **30th day** after the date when the Contract Times commence to run.

3.03 Liquidated Damages

CONTRACTOR and OWNER 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 3.02 above, plus any extensions thereof allowed in writing as a change order to this Agreement. Liquidated damages will

commence for this portion of work. The parties also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER **\$980.00¹** for each calendar day that expires after the time specified in paragraph 3.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

¹ Reference for liquidated damages amount "Standard Specifications for Road & Bridge Construction", Florida Department of Transportation (FDOT) FY 2023-24, Section 8-10.2 for projects \$299,999. and under. THE ACTUAL LIQUIDATED DAMAGES AMOUNT WILL BE BASED ON THE CONTRACT AWARD AMOUNT AND WILL BE DETERMINED USING THE REFERENCED FDOT CRITERIA.

ARTICLE 4 - CONTRACT PRICE

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

- A. For all Work, at the prices stated in CONTRACTOR's Bid, attached hereto as Exhibit 1.
- B. THE CONTRACT SUM subject to additions and deductions provided in the Contract Documents:

Numerical Amount: \$ _____

Written Amount: _____

ARTICLE 5 - PAYMENT PROCEDURES

5.01 *Progress Payments.*

- A. The OWNER shall make progress payments to the CONTRACTOR on the basis of the approved partial payment request as recommended by ENGINEER in accordance with the provisions of the Local Government Prompt Payment Act, Florida Statutes section 218.70 et. seq. The OWNER shall retain five percent (5%) of the payment amount due to CONTRACTOR until substantial completion and acceptance of all work to be performed by CONTRACTOR under the Contract Documents.
- B. For construction projects less than \$10 million, at the time the Owner is in receipt of the Certificate of Substantial Completion, the Owner shall have 30 calendar days to provide a list to the Contractor of items to be completed and the estimated cost to complete each item on the list. Owner and Contractor agree that the Contractor's itemized bid shall serve as the basis for determining the cost of each item on the list. For projects in excess of \$10 million, owner shall have up to 45 calendar days following receipt of Certificate of Substantial Completion of the project to provide contractor with said list.
- C. Within 20 business days following the creation of the list, Owner shall pay Contractor the remaining contract balance including all retainage previously withheld by Owner except for an amount equal to 150% of the estimated cost to complete all of the items on the list. Upon completion of all items on the list, the Contractor may submit a payment request for the amount of the 150% retainage held by the Owner. If a good faith dispute exists as to whether one or more of the items have been finished, the owner may continue to

withhold the 150% of the total cost to complete such items. The owner shall provide Contractor written reasons for disputing completion of the list.

5.02 *Pay Requests.*

5.01 Method of Payment

Owner shall make only one payment for the entire amount of the contract when the work has been completed. 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.).

5.02 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 Agreement and for every act and neglect of the OWNER and others relating to or arising out of the work. Any payment, however, final or otherwise, shall not release the CONTRACTOR or its sureties from any obligations under this Agreement, the Invitation to Bid or the Public Construction Bond.

ARTICLE 6 - INDEMNIFICATION

6.01 CONTRACTOR shall indemnify and hold harmless the OWNER, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable 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 Work.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

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

- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Invitation to Bid documents.
- B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by

CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

- E. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. CONTRACTOR has given OWNER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by OWNER is acceptable to CONTRACTOR.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. 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 an affidavit from all subcontractors, as required in Section 448.095(5)(b), F.S., stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.
- K. Contractor will comply with all the requirements as imposed by the Americans with Disabilities Act of 1990 ("ADA"), the regulations of the Federal government issued thereunder, and the assurance by the Contractor pursuant thereto.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 *Contents*

A. The Contract Documents consist of the following:

- (1) This Agreement;
- (2) Notice to Proceed;
- (3) Public Construction Bond;
- (4) Certificate(s) of Liability Insurance;
- (5) Invitation to Bid 2024057;
- (6) Addenda (numbers to , inclusive);
- (7) CONTRACTOR'S Bid Form;
- (8) Bid Bond;
- (9) Qualifications Questionnaire;
- (10) Drug Free Workplace Form;
- (11) Sworn Statement Under Section 105.08, Indian River County Code, on Disclosure of Relationships;

- (12) Certification Regarding Prohibition Against Contracting with Scrutinized Companies;
- (13) Certification Regarding Lobbying;
- (14) The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a) Written Amendments;
 - b) Work Change Directives;
 - c) Change Order(s).

ARTICLE 9 - MISCELLANEOUS

9.01 *Terms*

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

9.02 *Assignment of Contract*

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

9.03 *Successors and Assigns*

- A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability*

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

9.05 *Venue*

- A. This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Indian River County, Florida, or, in the event of a federal jurisdiction, in the United States District Court for the Southern District of Florida.

9.06 *Public Records Compliance*

- A. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:
 - (1) Keep and maintain public records required by the County to perform the service.

(2) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.

(4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

B. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

(772) 226-1424

publicrecords@indianriver.gov

Indian River County Office of the County Attorney

1801 27th Street

Vero Beach, FL 32960

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

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

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

OWNER:

INDIAN RIVER COUNTY

By: _____
Susan Adams, Chairman

By: _____
John A. Titkanich, Jr., County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
William K. DeBraal, County Attorney

Ryan L. Butler, Clerk of Court and Comptroller

Attest: _____
Deputy Clerk

(SEAL)

Designated Representative:
Name: Kirstin Leiendecker, P.E.
Title: Acting Public Works Director
Address: 1801 27th Street, Vero Beach FL 32960
Phone: 772-226-1379
Email: kleiendecker@indianriver.gov

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.)