

## **CONTINUING CONTRACT AGREEMENT FOR AS-NEEDED CULVERT REPLACEMENT AND REPAIR**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and \_\_\_\_\_ hereinafter referred to as the "CONTRACTOR".

### BACKGROUND RECITALS:

COUNTY selected CONTRACTOR to provide work related to various as-needed culvert replacement and repair services ("Services"), based on a bid received in response to Invitation to Bid 2025058, with all issued and received documents incorporated herein by reference.

That the COUNTY and the CONTRACTOR, in consideration of their mutual covenants, herein agree with respect to the performance of construction services by the CONTRACTOR, and the payment for those services by the COUNTY, as set forth below and in individual Work Orders. This agreement shall be referred to as the "MASTER AGREEMENT" under which future Work Orders will apply.

The proposed work consists of the provision of all labor, tools, equipment and material necessary to complete construction, maintenance, or repairs to various culverts on an as-requested basis. The work is generally located in Indian River County.

The CONTRACTOR shall provide the COUNTY with services and at the rates provided in Exhibit 1, Contractor's Price Proposal.

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 Services shall be identified in individual Purchase Orders, and performed in a timely, efficient, cost-effective manner. Purchase Orders shall reference a quote or proposal number, which includes a description of services to be performed; a statement of fees; a projected schedule for completion of the work to be performed by the CONTRACTOR; 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 Purchase Order is used herein, it is intended to mean a formal document, that is dated; serially numbered; in the COUNTY's standard template, and executed by the COUNTY, 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. No work may begin until the executed Purchase Order is provided to the CONTRACTOR, and until any required bonds and insurance are accepted by COUNTY.

1.3 Services related to any individual Purchase Order which would increase or decrease cost, or which are otherwise outside the scope of Services or level of effort contemplated by the Purchase Order 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 Purchase Order; and when properly authorized and executed by both the CONTRACTOR and the COUNTY, shall become an amendment to the Purchase Order or a new Purchase Order, at the sole option of the COUNTY. A separate Notice-to-Proceed may, at the sole option of the COUNTY, be given for each

phase of the services contained in any Work Order hereunder.

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

1.5 No representation or guarantee is made by 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 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 The COUNTY reserves the right to appoint one or more Project Managers for the specific Services in connection with any Work Order. 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.

2.6 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 Order 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.

2.7 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 Services in connection with the assigned Project(s) as set forth in the Purchase Orders and in this Agreement.

3.2 The CONTRACTOR agrees to complete the Project within the time frame specified in the Purchase Order.

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

3.4 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.

3.5 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.

3.6 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.

3.7 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.

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

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

3.10 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, and upon final payment all of the above data shall be delivered to the County Project Manager.

3.11 CONTRACTOR is registered with and will use the Department of Homeland Security's E-

Verify system ([www.e-verify.gov](http://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.

#### **4. TERM; DURATION OF AGREEMENT**

This Agreement shall remain in full force and effect for a period of two years, unless otherwise terminated by mutual consent of the parties hereto, or terminated pursuant to Section 8 "Termination", This Agreement may be extended for two additional one-year terms, by mutual consent of the parties.

#### **5. COMPENSATION**

Work Authorizations that are less than \$200,000.00 may not require a Public Construction Bond. COUNTY shall make only one payment for the entire amount of the related applicable Purchase Order after the terms of the related applicable Work Authorization have been fulfilled. Upon 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.).

#### **6. ADDITIONAL WORK**

6.1 If services in addition to the Services provided hereunder are required or desired by the County in connection with the Project, the COUNTY may, at the sole option of the COUNTY: separately obtain same outside of this Agreement; or request the CONTRACTOR to provide, either directly by the CONTRACTOR or by a subcontractor, such additional services by a new Purchase Order or by a written amendment to a specific Purchase Order.

#### **7. INSURANCE AND INDEMNIFICATION**

7.1 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.

7.2 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.

7.3 The Contractor shall procure and maintain broad form commercial general liability insurance (including contractual coverage) and commercial automobile liability insurance in amounts as specified in Request for Proposals 2025005. The County shall be an additional named insured on this insurance with respect to all claims arising out of the operations or work to be performed.

7.4 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.

7.5 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.

7.6 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.

7.7 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.

## **8. TERMINATION**

8.1 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.

8.2 In the event of termination by the COUNTY, the COUNTY's sole obligation to the CONTRACTOR shall be payment for those portions of satisfactorily completed work previously authorized by approved Work Order. Such payment shall be determined on the basis of the hours of work performed by the CONTRACTOR, or the percentage of work complete as estimated by the CONTRACTOR and agreed upon by the COUNTY up to the time of termination. In the event of such termination, the COUNTY may, without penalty or other obligation to the CONTRACTOR, elect to employ other persons to perform the same or similar services.

8.3 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.

8.4 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.

8.5 A vendor or service provider that breaches this agreement during an emergency recovery period (1-year period that begins on the date that the governor initially declared a state of emergency for a natural emergency) is to pay a \$5,000 penalty and damages which may be either actual and consequential damages or liquidated damages.

8.6 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.

8.7 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. 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. 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 agreement 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.

## **9. MISCELLANEOUS PROVISIONS**

9.1 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.

9.2 Merger; Modification. 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.

9.3 **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.

9.4 **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 do 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.

9.5 **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.

9.6 **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.

9.7 **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.

9.8 **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.

9.9 **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 parties 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 draftsperson shall be inapplicable to this Agreement.

9.10 **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.

9.11 Public Records Compliance. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Consultant shall comply with Florida's Public Records Law. Specifically, the Consultant 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 Consultant or keep and maintain public records required by the County to perform the service. If the Consultant transfers all public records to the County upon completion of the contract, the Consultant 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 Consultant 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.

**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](mailto:publicrecords@ircgov.com)**

**Indian River County Office of the County Attorney**

**1801 27<sup>th</sup> Street, Vero Beach, FL 32960**

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

9.12 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:

Indian River County

Attn:

1800 27<sup>th</sup> 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.

9.13        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.

9.14        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 draftsperson shall be inapplicable to this Agreement.

9.15        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.

9.16        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.

9.17        Changes. Any modification to this agreement must be made in writing. The cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

9.18        Cooperative Purchasing. This agreement shall be available to eligible agencies for cooperative procurement purposes, however, COUNTY is not a party to any agreement or dispute between CONTRACTOR and an agency utilizing this provision.

## **10. FUNDING CLAUSES**

10.01 Some work under this agreement may be funded through federal or state grants. COUNTY 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**B. 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 \$32 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.

(i) *Withholding Process.* The 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 so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its reprocurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

(4) Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime contractor, and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- (ii) Filing any complaint, initiating, or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- (iv) Informing any other person about their rights under CWHSSA or this part.

#### **C. Compliance with the Contract Work Hours and Safety Standards Act:**

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

#### **D. Clean Air Act and Federal Water Pollution Control Act:**

(1) Clean Air Act.

(a) 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.

(b) 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 Federal

Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(c) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(2) **Federal Water Pollution Control Act**

(a) 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.

(b) 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 Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(c) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**E. Suspension and Debarment**

(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 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 COUNTY, 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.

**F. Byrd Anti-Lobbying Amendment, as amended, 31 U.S.C. § 1352**

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.

**G. 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.

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

## **H. Prohibition on Contracting for Covered Telecommunications Equipment or Services:**

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item

description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

#### **I. Domestic Preference for Procurements**

The Contractor should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

#### **J. Access to Records** The following access to records requirements apply to this contract:

(1) The contractor agrees to provide COUNTY, 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 section 1225 of the Disaster Recovery Act of 2018, the COUNTY 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.

**K. DHS Seal, Logo, and Flags:** The contractor must obtain written permission from DHS prior to using the DHS seals, logos, crests, or reproductions of flags, or likenesses of DHS agency officials. This includes use of DHS component (e.g., FEMA, CISA, etc.) seals, logos, crests, or reproductions of flags, or likenesses of component officials..

**L. Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA 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 FEMA policies, procedures, and directives.

**M. 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 County, contractor, or any other party pertaining to any matter resulting from the contract.

**N. 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 this contract.

**O. Affirmative Steps:** If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(6) to ensure that small and minority

businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are used when possible.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

COUNTY:

INDIAN RIVER COUNTY

By: \_\_\_\_\_  
Joseph E. Flescher, Chairman

By: \_\_\_\_\_  
John A. Titkanich, Jr., County Administrator

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

By: \_\_\_\_\_  
Jennifer W. Shuler, County Attorney

Ryan L. Butler, Clerk of Court and  
Comptroller

Attest: \_\_\_\_\_  
Deputy Clerk

(SEAL)

CONTRACTOR:

COMPANY NAME

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit 1 – Proposal Price Form