



**CONTRACT**

**BETWEEN**

**BROWARD COUNTY**

**AND**

**INTERCOUNTY ENGINEERING, INC.**

**FOR**

**REGIONAL MASTER METER IMPROVMENTS – BID PACKAGE NO.2**

**BCWWS PROJECT NO. 9232-100955**

**BID/CONTRACT NO.: PNC2120004C1**

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**005200 CONTRACT**

This is a Construction Contract (“Contract”), by and between Broward County, a political subdivision of the State of Florida (“County”), and Intercounty Engineering, Inc. (“Contractor”) (collectively referred to as the “Parties”), for the goods and services set forth herein.

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

**ARTICLE 1 DEFINITIONS**

For purposes of this Contract, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions and identifications set forth below apply unless the context in which the word or phrase is used requires a different definition. Whenever the following terms or pronouns in place of them appear in the Contract Documents, the intent and meaning shall be interpreted as follows:

- 1.1. **Bidder**: Any individual, firm, or corporation submitting a bid for this Project, acting directly or through a duly authorized representative.
- 1.2. **Board**: The Board of County Commissioners of Broward County, Florida, its successors and assigns.
- 1.3. **Change Order**: A written document ordering a change in the Contract Price or Contract Time or a material change in the Work.
- 1.4. **Consultant**: Architect or engineer who has contracted with County or who is an employee of County and provides professional services for this Project.
- 1.5. **Contract Administrator**: The ranking managerial employee of the agency of County government which requested the Project, or some other employee expressly designated as Contract Administrator in writing by said ranking managerial employee.
- 1.6. **Contract Documents**: The official documents setting forth bidding information, requirements, and contractual obligations for the Project and includes Articles 1 through 7 of this Contract, the Contract Supplement, the General Conditions, the Supplemental General Conditions, the Scope of Work, Invitation to Bid, Addenda, Standard Instructions for Vendors, Special Instructions for Vendors, Plans, Drawings, Exhibits, General Requirements, Technical Specifications, Bid Forms, Record of Award by Board, Bonds, Notice of Award, Notices(s) to Proceed, Supplements, Representations and Certifications, Certificates, Project Forms, Closeout Forms, Purchase Order(s), Change Order(s), Field Order(s), and any additional documents the submission of which is required by this Project.

- 1.7. Contract Price: The original amount established in the bid submittal and award by the Board, as may be amended by Change Order.
- 1.8. Contract Time: The original time between commencement and completion, including any milestone dates thereof, established in Article 3 of this Contract, as may be amended by Change Order.
- 1.9. Contractor: The person, firm, or corporation with whom Broward County has contracted and who is responsible for the acceptable performance of the Work and for the payment of all legal debts pertaining to the Work. All references in the Contract Documents to third parties under contract or control of Contractor shall be deemed to be a reference to Contractor.
- 1.10. Field Order: A written order which orders minor changes in the Work but which does not involve a change in the Contract Price or Contract Time.
- 1.11. Final Completion: The date certified by Consultant in the Final Certificate of Payment upon which all conditions and requirements of any permits and regulatory agencies have been satisfied; any documents required by the Contract Documents have been received by Consultant; any other documents required to be provided by Contractor have been received by Consultant; and to the best of Consultant's knowledge, information and belief the Work defined herein has been fully completed in accordance with the terms and conditions of the Contract Documents.
- 1.12. Materials: Materials incorporated in this Project or used or consumed in the performance of the Work.
- 1.13. Notice(s) to Proceed: Written notice to Contractor authorizing the commencement of the activities identified in the notice or as described in the Contract Documents.
- 1.14. Plans or Drawings: The official graphic representations of this Project that are a part of the Contract Documents.
- 1.15. Project: The construction project described in the Contract Documents, including the Work described therein.
- 1.16. Project Initiation Date: The date upon which the Contract Time commences.
- 1.17. Subcontractor: A person, firm or corporation having a direct contract with Contractor including one who furnishes material worked to a special design according to the Contract Documents, but does not include one who merely furnishes Materials not so worked.
- 1.18. Substantial Completion: That date, as certified in writing by Consultant and as finally determined by Contract Administrator in its sole discretion, on which the Work, or a portion thereof, is at a level of completion in substantial compliance with the Contract Documents such

that all conditions of permits and regulatory agencies have been satisfied and the County or its designee can enjoy use or occupancy and can use or operate it in all respects for its intended purpose. A Certificate of Occupancy (or a Temporary Certificate of Occupancy (TCO) or other alternate municipal/county authorization for limited or conditional occupancy acceptable to the Contract Administrator) must be issued for Substantial Completion to be achieved, however, the issuance of a Certificate of Occupancy or the date thereof are not to be determinative of the achievement or date of Substantial Completion.

1.19. Surety: The surety company or individual which is bound by the performance bond and payment bond with and for Contractor who is primarily liable, and which surety company or individual is responsible for Contractor's satisfactory performance of the Work under this Contract and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.

1.20. Work: The construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a part of the Project.

## **ARTICLE 2     SCOPE OF WORK**

Contractor hereby agrees to furnish all of the labor, materials, equipment, services, and incidentals necessary to perform all of the Work described in the Contract Documents and related thereto for the Project.

## **ARTICLE 3     CONTRACT TIME**

3.1. Contractor shall be instructed to commence the Work by written instruction in the form of a Purchase Order issued by the County's Director of Purchasing and two or more Notices to Proceed issued by the Contract Administrator. The first Notice to Proceed and Purchase Order will not be issued until Contractor's submission to County of all required documents and after execution of this Contract by both Parties. Preliminary work, including submission of a project schedule, schedule of values, submittals, submittal schedule, and other documents required for permitting, and performance of work that does not require permits, shall be commenced within ten (10) calendar days after the date of the first Notice to Proceed. Contractor shall have ten (10) days after receipt of signed and sealed contract drawings from Consultant to apply for construction permits to the applicable permitting authority. Issuance of all permits by the permitting authority shall be a condition precedent to the issuance of a second Notice to Proceed for all other Work. Except for the reimbursement of permit application fees as may be provided in the Contract Documents, Contractor shall not be entitled to compensation of any kind during the permitting process. The Work to be performed pursuant to the second Notice to Proceed shall be commenced within ten (10) calendar days of the Project Initiation Date specified in the second Notice to Proceed.



3.2. Time is of the essence throughout this Contract. Contractor must obtain Substantial Completion of the Work within three hundred and sixty (360) calendar days from the Project Initiation Date specified in the Second Notice to Proceed, and Final Completion within sixty (60) calendar days from the date of Substantial Completion.

3.3. Upon failure of Contractor to obtain Substantial Completion within the deadline stated in Section 3.2, plus approved time extensions, Contractor shall pay to County the sum of One Thousand Three Hundred Sixty Dollars (\$1,360) for each calendar day after the deadline for Substantial Completion, plus any approved time extensions, until Substantial Completion is obtained. After Substantial Completion, should Contractor fail to complete the remaining Work within the deadline stated in Section 3.2, plus approved time extensions thereof, Contractor shall pay to County the sum of One Thousand One Hundred Sixty Dollars (\$1,160) for each calendar day after the deadline for Final Completion, plus any approved extensions, until Final Completion is obtained. These amounts are not penalties but are liquidated damages to County for its inability to obtain full beneficial occupancy of the Project. Liquidated damages are hereby fixed and agreed upon between the Parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by County as a consequence of such delay, and both Parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of Contractor to complete this Contract on time.

The above-stated liquidated damages shall apply separately to each portion of the Project for which a deadline for completion is given.

3.4. County is authorized to deduct liquidated damages from monies due to Contractor for the Work under this Contract or as much thereof as County may, in its sole discretion, deem just and reasonable.

3.5. Contractor shall be responsible for reimbursing County, in addition to liquidated damages, for all costs incurred by Consultant in administering the construction of the Project beyond the completion date specified above, plus approved time extensions. Consultant construction administration costs shall be pursuant to the contract between County and Consultant, a copy of which is available upon request of the Contract Administrator. All such costs shall be deducted from the monies due Contractor for performance of Work under this Contract by means of unilateral credit Change Orders issued by County as costs are incurred by Consultant and agreed to by County.

#### ARTICLE 4 CONTRACT SUM

4.1.  This is a Unit Price Contract:\*

4.1.1. County shall pay to Contractor the amounts determined for the total number of each of the units of work completed at the unit price stated in the schedule of prices bid. The number of units contained in this schedule is an estimate only, and

final payment shall be made for the actual number of units incorporated in or made necessary by the Work covered by the Contract Documents.

- 4.1.2. Payment shall be made at the unit prices applicable to each integral part of the Work. These prices shall be full compensation for all costs, including overhead and profit, associated with completion of all the Work in full conformity with the requirements as stated or shown, or both, in the Contract Documents. The cost of any item of Work not covered by a definite Contract unit price shall be included in the Contract unit price or lump sum price to which the item is most applicable.

4.2.  This is a Lump Sum Contract:\*

- 4.2.1. County shall pay to Contractor for the performance of the Work described in the Contract Documents, the total price stated as awarded.
- 4.2.2. Payment shall be at the lump sum price stated in this Contract. This price shall be full compensation for all costs, including overhead and profit, associated with completion of all the Work in full conformity with the requirements as stated or shown, or both, in the Contract Documents. The cost of any item of Work not covered by a definite Contract lump sum should be included in the lump sum price to which the item is most applicable.

\*Note: Only the subsections corresponding to any checked box in this Article 4 will apply to this Contract. Some Projects include both unit prices and lump sums, in which case all subsections shall apply as appropriate depending upon the type of Work being performed by Contractor and approved by County.

## ARTICLE 5      PROGRESS PAYMENTS

5.1. Contractor may make Application for Payment for Work completed during the Project at intervals of not more than once a month. Contractor shall, where the Project involves Broward County Business Enterprise ("CBE") subcontractors, make Application for Payment for Work completed by such subcontractors during the Project at monthly intervals. Contractor's application shall show a complete breakdown of the Project components, the quantities completed, and the amount due, together with such supporting evidence as may be required by Consultant or Contract Administrator. Contractor shall submit with each Application for Payment an updated progress schedule acceptable to Consultant as required by the Contract Documents, a Certification of Payments to Subcontractors Form (007500-9), a statement indicating the cumulative amount of CBE participation to date, and a release of claims relative to the Work which was the subject of previous applications or consent of surety relative to the Work which is the subject of the Application. The Certification of Payments to Subcontractors Form shall be accompanied by a copy of the notification sent to each Subcontractor (listed in Item 2 of the Form), explaining the good cause why payment has not been made. When applicable, an

Application for Payment shall be accompanied by a completed Statement of Wage Compliance Form (007500-8). Each Application for Payment shall be submitted in triplicate to Consultant for approval as follows:

Timothy J. O'Neil  
CDM Smith  
One Park Place, 621 NW 53<sup>rd</sup> Street, Suite 265  
Boca Raton, Florida 33487

All such applications for payment (hereinafter "Invoices") shall be stamped as received on the date on which it is delivered above. Payments of Invoices shall be subject to approval as specified hereinbefore and if approved, shall be due twenty-five (25) business days after the date on which the Invoice is stamped received. At the end of the twenty-five (25) business days, the Contractor may send the Contract Administrator an overdue notice. If the Invoice is not rejected within 4 business days after delivery of the overdue notice, the Invoice shall be deemed accepted, except for any portion of the Invoice that is fraudulent or misleading. If the Invoice does not meet the requirements of this Contract, the County shall reject the invoice within twenty (20) business days after the date stamped received and said rejection shall specify the deficiency and the action necessary to make the Invoice proper. If the Contractor submits a request that corrects the deficiency, the corrected Invoice must be paid or rejected within ten (10) business days after the corrected Invoice is stamped as received. If the dispute between County and the Contractor cannot be resolved as set forth above, and the dispute directly relates to the promptness of payment, the dispute shall be resolved in accordance the Prompt Payment Ordinance (Section 1-51.6 of the Broward County Code of Ordinances). For all other disputes related to payment, the dispute shall be resolved pursuant to the dispute resolution procedure set forth in Article 12 of the General Conditions.

5.2. Ten percent (10%) of all monies earned by Contractor shall be retained by County until Final Completion and acceptance by County in accordance with Article 6 hereof, except that after fifty percent (50%) of the Work has been completed, the Contract Administrator shall reduce the retainage to five percent (5%) of all monies previously earned and all monies earned thereafter, and after ninety percent (90%) of the Work has been completed, the Contract Administrator may reduce the retainage to two and one-half percent (2-1/2%) of all monies previously earned and all monies earned thereafter. Any reduction in retainage below five percent (5%) shall be at the sole discretion of the Contract Administrator, as may be recommended by Consultant, and Contractor shall have no entitlement to a reduction. Any interest earned on retainage shall accrue to the benefit of County.

Payment for materials and equipment stored at the project site shall be equal to ninety percent (90%) of the invoiced amount of the materials and equipment as set forth herein. Additionally, retainage on ninety percent (90%) of the invoiced amount shall be paid per this section. The invoiced amount shall be based on the value of all acceptable materials and equipment not yet incorporated in the Work but delivered and suitably stored at the project site and scheduled for installation on-site within thirty (30) calendar days of the date of the Application for Payment.

Copies of the supplier's invoices for the materials and equipment shall be included with the Application for Payment.

5.3. County may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

- 5.3.1 Defective work not remedied.
- 5.3.2 Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor or County because of Contractor's performance.
- 5.3.3 Failure of Contractor to make payments properly to Subcontractors or for material or labor.
- 5.3.4 Damage to another contractor not remedied.
- 5.3.5 Liquidated damages and costs incurred by Consultant for extended construction administration.
- 5.3.6 Failure of Contractor to provide any and all documents required by the Contract Documents.

When the above grounds are removed or resolved satisfactory to the Contract Administrator, any withheld payment shall be made to the extent otherwise due.

## **ARTICLE 6 ACCEPTANCE AND FINAL PAYMENT**

6.1. Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance, Consultant shall conduct an inspection within ten (10) calendar days. If Consultant and Contract Administrator find the Work acceptable, the requisite documents have been submitted and the requirements of the Contract Documents fully satisfied, and all conditions of the permits and regulatory agencies have been met, a Final Certificate of Payment (007600-2) shall be issued by Consultant, over its signature, stating that the requirements of the Contract Documents have been performed and the Work is ready for acceptance under the terms and conditions thereof.

6.2. Before issuance of the Final Certificate for Payment, Contractor shall deliver to Consultant: a complete release of all claims arising out of this Contract, or receipts in full in lieu thereof; an affidavit certifying that all suppliers and Subcontractors have been paid in full and that all other indebtedness connected with the Work has been paid, or a consent of the surety to final payment; the final corrected as-built drawings; and the final bill of materials, if required, and invoice. Final payment package is to include the certification document titled "Final List of Non-Certified Subcontractors and Suppliers" Form (007600-4), which must be signed and notarized by Contractor. A list of all noncertified subvendors used must be attached to this certified document.

6.3. If, after Substantial Completion, Final Completion is materially delayed through no fault of Contractor, and Consultant so certifies, County shall, upon certificate of Consultant, and without terminating this Contract, make payment of the balance due for that portion of the Work

fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

6.4. Final payment shall be made only after the County's Director of Purchasing or Board of County Commissioners, as applicable, has reviewed a written evaluation of the performance of Contractor prepared by the Contract Administrator, and approved the final payment. The acceptance of final payment shall constitute a waiver of all claims by Contractor, except those previously made in strict accordance with the provisions of the General Conditions and identified by Contractor as unsettled at the time of the application for final payment.

## ARTICLE 7 MISCELLANEOUS

7.1. Contract Documents and Priority of Provisions. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. All of the documents incorporated in the Contract Documents shall govern this Project. Where there is a conflict between any provision set forth within the Contract Documents and a more stringent state or federal provision which is applicable to this Project, the more stringent state or federal provision shall prevail. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of any article in the Contract Documents, the provisions contained in the Contract Supplement, the Contract, the Supplemental General Conditions, or the General Conditions shall prevail (in that order) and be given effect.

7.2. Public Entity Crimes. Contractor represents that it is familiar with the requirements and prohibitions of the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Contract will not violate that Act. In addition to the foregoing, Contractor further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Contractor has been placed on the convicted vendor list. Notwithstanding any provision in this Contract to the contrary, if any representation stated in this paragraph is false, County shall have the right to immediately terminate this Contract and recover all sums paid to Contractor under this Contract.

7.3. Independent Contractor. Contractor is an independent contractor under this Contract. Services provided by Contractor pursuant to this Contract shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees, or agents of the County. This Contract shall not constitute or make the Parties a partnership or joint venture.

7.4. Third Party Beneficiaries. Neither Contractor nor County intends to directly or substantially benefit a third party by this Contract. Therefore, the Parties agree that there are no third party beneficiaries to this Contract (other than Consultant to the extent this Contract expressly states any such rights or remedies).

7.5. Notices. All notices to be given hereunder shall be in writing, and may be given by United States Mail, postage prepaid, return receipt requested, by commercial express carrier with acknowledgment of delivery, or by hand delivery, addressed to the party to be notified at the last place specified with a simultaneous copy sent via electronic mail. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following as the respective places for giving of notice:

For County:

Gregory M. Balicki, P.E. Contract Administrator BCWWED,  
2555 W. Copans Road  
Pompano Beach, FL 33069

For Contractor:

Stephen Polk  
Intercounty Engineering, Inc.  
1925 NW 18th Street  
Pompano Beach, FL 33069 U.S.A

7.6. Assignment and Performance. Neither this Contract nor any interest herein or proceeds hereof shall be assigned, transferred, or encumbered without the written consent of the other party, and Contractor shall not subcontract any portion of the Work required by this Contract except as authorized by Article 28 of the General Conditions.

Contractor represents that each person and entity that will provide services under this Contract is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. Contractor agrees that all services under this Contract shall be performed in a skillful and respectable manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

7.7. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Contract was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Contract and, therefore, is a material term hereof.

7.8. No Waiver. County's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Contract.

7.9. Severability. In the event any part of this Contract is found to be unenforceable by a court of competent jurisdiction, that part shall be deemed severed from this Contract and the balance of this Contract shall remain in full force and effect.

7.10. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Jurisdiction of any controversies or legal problems arising out of this Contract, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Contract shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS CONTRACT, CONTRACTOR AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS CONTRACT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS CONTRACT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION. CONTRACTOR, PURSUANT TO ARTICLE 28 OF THE GENERAL CONDITIONS, SHALL SPECIFICALLY BIND ALL SUBCONTRACTORS TO THE PROVISIONS OF THIS CONTRACT.**

7.11. Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Contract and executed by the Contractor and the Board or another person to whom appropriate authority has been delegated or who is otherwise authorized to execute same.

7.12. Prior Agreements. The Contract is the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement or understanding concerning the subject matter of this Contract that is not contained in this Contract or the Contract Documents.

7.13. Truth-In-Negotiation Representation. Contractor's compensation under this Contract is based upon representations supplied to County by Contractor, and Contractor certifies that the wage rates, factual unit costs, and other factual information supplied to substantiate Contractor's compensation are accurate, complete, and current at the time of contracting. County shall be entitled to recover any damages it incurs to the extent any such representation is untrue.

7.14. Workforce Investment Program. This Contract constitutes a "Covered Contract" under the Broward Workforce Investment Program, Broward County Administrative Code Section 19.211 ("Workforce Investment Program"). Contractor affirms it is aware of the requirements of the Workforce Investment Program and agrees to use good faith efforts to meet

the First Source Referral Goal and the Qualifying New Hires Goal as set forth therein, including by (a) publicly advertising any vacancies that are the direct result of this Contract (whether those vacancies are with Contractor or its subcontractors) exclusively with CareerSource Broward for at least five (5) business days and using good faith efforts to interview any qualified candidates referred under the Workforce Investment Program, and (b) using good faith efforts to hire Qualifying New Hires, as defined by the Workforce Investment Program, for at least fifty percent (50%) of the vacancies that are the direct result of this Contract. Until at least one year after the conclusion of this Contract, Contractor shall maintain and make available to County upon request all records documenting Contractor's compliance with the requirements of the Workforce Investment Program, and shall submit the required Workforce Investment Reports to the Contract Administrator annually by January 31 and within thirty (30) days after the conclusion of this Contract. Failure to demonstrate good faith efforts to meet the First Source Referral Goal and the Qualifying New Hires Goal shall constitute a material breach of this Contract. |

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IN WITNESS WHEREOF, the Parties have made and executed this Contract: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and CONTRACTOR, signing by and through its President, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
Ex-Officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By Counall 3/11/20  
Signature (Date)

By KGB 03/18/2020  
Keoki Baron (Date)  
Assistant County Attorney

Colleen Counall Ass. Risk Manager  
Print Name and Title above

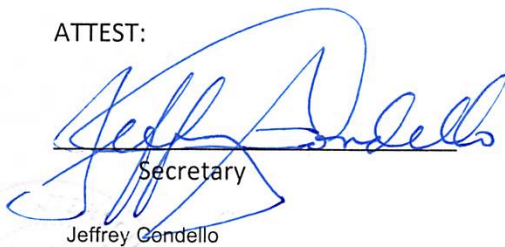
By [Signature] 3/18/2020  
(Date)  
Deputy County Attorney

CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION OR NONCORPORATION FORMAT, AS APPLICABLE.

[If incorporated sign below.]

Contractor

ATTEST:

  
Secretary

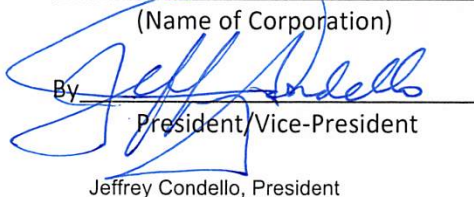
Jeffrey Condello

(Print/Type Name)

(Corporate Seal)

Intercounty Engineering, Inc.

(Name of Corporation)

By 

President/Vice-President

Jeffrey Condello, President

(Type/Type Name and Title)

17 day of March, 2020.

[If not incorporated sign below.]

Contractor

WITNESSES:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print/Type Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print/Type Name)

\_\_\_\_\_  
(Business Name)

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type/Print Name and Title)

\_\_\_ day of \_\_\_\_\_, 20\_\_\_.

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COUNTY REQUIRES FOUR (4) FULLY-EXECUTED CONTRACTS, FOR DISTRIBUTION. |

**005400 CONTRACT SUPPLEMENT**

The following deviations are incorporated herein and made a part of this Contract, revising the respective article and section as noted below.

1. Unless otherwise stated, words in ~~struck-through~~ type are deletions from existing text and words in underlined type are additions to existing text.

2. Article 1, Definitions, Section 1.4 is hereby revised to read as follows:

Consultant: Architect or engineer who has contracted with County or who is an employee of County and provides professional services for this Project. Also referred to as the "Engineer."

**007200 GENERAL CONDITIONS**

**ARTICLE 1 CONTRACT DOCUMENTS**

1.1 The Contract Documents shall be followed in strict accordance as to Work, performance, material, and dimensions except when Consultant may authorize, in writing, an exception.

1.2 Dimensions given in figures are to hold preference over scaled measurements from the drawings; however, all discrepancies shall be resolved by Consultant. Contractor shall not proceed when in doubt as to any dimension or measurement, but shall seek clarification from Consultant.

1.3 Contractor shall be furnished ten (10) copies, free of charge, of this Contract; two (2) of which shall be preserved and always kept accessible to Consultant and Consultant's authorized representatives. Additional copies of this Contract may be obtained from County at the cost of reproduction.

**ARTICLE 2 INTENTION OF COUNTY**

It is the intent of County to describe in this Contract a functionally complete Project (or part thereof) to be constructed in accordance with this Contract and in accordance with all codes and regulations governing construction of the Project. Any work, materials or equipment that may reasonably be inferred from this Contract as being required to produce the intended result shall be supplied by Contractor whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of bids and Contractor shall comply therewith. County shall have no duties other than those duties and obligations expressly set forth within this Contract.

**ARTICLE 3 PRELIMINARY MATTERS**

3.1. At least five (5) calendar days prior to the pre-construction meeting described in Section 3.2, Contractor shall submit to Consultant for Consultant's review and acceptance:

3.1.1. A progress schedule in the indicated form:

Bar Chart

Modified CPM

CPM

Computerized CPM

(CPM shall be interpreted to be generally as outlined in the Association of General Contractors (AGC) publication, "The Use of CPM in Construction.")

The progress schedule shall indicate the start and completion dates of the various stages of the Work and shall show an activity network for the planning and execution of the Work. Included with the progress schedule shall be a narrative description of the progress schedule. The progress schedule must be updated monthly by Contractor, submitted as part of each Application for Payment and shall be acceptable to Consultant.

3.1.2. A preliminary schedule of Shop Drawing submissions; and

3.1.3. In a lump sum contract or in a contract which includes lump sum bid items of Work, a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by Contractor at the time of submission.

Such prices shall be broken down to show labor, equipment, materials, and overhead and profit.

3.1.4. After award but prior to the submission of the progress schedule, Consultant, Contract Administrator and Contractor shall meet with all utility owners and secure from them a schedule of utility relocation, provided, however, neither Consultant nor County shall be responsible for the nonperformance by the utility owners.

3.2. At a time specified by Consultant but before Contractor starts the Work at the Project site, a conference attended by Contractor, Consultant and others as deemed appropriate by Contract Administrator, will be held to discuss the schedules referred to in Section 3.1, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the Parties as to the Work.

3.3. Within thirty-five (35) days from the Project Initiation Date set forth in the Notice to Proceed, a conference attended by Contractor, Consultant and others, as appropriate, will be held to finalize the schedules submitted in accordance with Section 3.1. Within forty-five (45) days after the Project Initiation Date set forth in the Notice to Proceed, the Contractor shall revise



the original schedule submittal to address all review comments from the CPM review conference and resubmit for Consultant review. The finalized progress schedule will be accepted by Consultant only as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance shall not constitute acceptance by County or Consultant of the means or methods of construction or of the sequencing or scheduling of the Work, and such acceptance will neither impose on Consultant or County responsibility for the progress or scheduling of the Work nor relieve Contractor from full responsibility therefor. The finalized schedule of Shop Drawing submissions must be acceptable to Consultant as providing a workable arrangement for processing the submissions. The finalized schedule of values pursuant to subsection 3.1.3 above must be acceptable to Consultant as to form and substance.

#### **ARTICLE 4 PERFORMANCE BOND AND PAYMENT BOND**

4.1. Within fifteen (15) calendar days of being notified of the award, Contractor shall furnish a Performance Bond and a Payment Bond containing all the provisions of the Performance Bond (Form 007500-1) and Payment Bond (Form 007500-2). Each Bond shall be in the amount of one hundred percent (100%) of the Contract Price guaranteeing to County the completion and performance of the Work covered in such Contract as well as full payment of all suppliers, laborers, or subcontractors employed pursuant to this Project. Each Bond shall be with a surety company which is qualified pursuant to Article 5.

4.2. Each Bond shall continue in effect for one (1) year after Final Completion and acceptance of the Work with liability equal to one hundred percent (100%) of the Contract Price, or an additional bond shall be conditioned that Contractor will, upon notification by County, correct any defective or faulty work or materials which appear within one (1) year after Final Completion of this Contract.

4.3. Pursuant to the requirements of Section 255.05, Florida Statutes, Contractor shall ensure that the bond(s) referenced above shall be recorded in the public records of Broward County and provide County with evidence of such recording.

4.4. In lieu of a Performance Bond and a Payment Bond, Contractor may furnish alternate forms of security which may be in the form of cash, money order, certified check, cashier's check, or unconditional letter of credit (Form 007500-5). Such alternate forms of security shall be subject to the approval of County and for same purpose and shall be subject to the same conditions as those applicable above and shall be held by County for one (1) year after completion and acceptance of the Work.

#### **ARTICLE 5 QUALIFICATION OF SURETY**

5.1. Bid Bonds, Performance Bonds, and Payment Bonds over Five Hundred Thousand Dollars (\$500,000.00):

5.1.1. Each bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years.

5.1.2. The surety company shall hold a current Certificate of Authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised (31 C.F.R. Section 223.10, Section 223.11). Further, the surety company shall provide County with evidence satisfactory to County that such excess risk has been protected in an acceptable manner.

5.1.3. The surety company shall have at least the following minimum ratings. A surety company that is rejected by County may be substituted by the Bidder or proposer with a surety company acceptable to the County, only if the bid amount does not increase. The following sets forth, in general, the acceptable parameters for bonds:

| <b>Amount of Bond</b>           | <b>Policy Holder's Ratings</b> | <b>Financial Size Category</b> |
|---------------------------------|--------------------------------|--------------------------------|
| <b>500,001 to 1,000,000</b>     | <b>A,A-</b>                    | <b>Class I</b>                 |
| <b>1,000,001 to 2,000,000</b>   | <b>A,A-</b>                    | <b>Class II</b>                |
| <b>2,000,001 to 5,000,000</b>   | <b>A</b>                       | <b>Class III</b>               |
| <b>5,000,001 to 10,000,000</b>  | <b>A</b>                       | <b>Class IV</b>                |
| <b>10,000,001 to 25,000,000</b> | <b>A</b>                       | <b>Class V</b>                 |
| <b>25,000,001 to 50,000,000</b> | <b>A</b>                       | <b>Class VI</b>                |
| <b>50,000,001 or more</b>       | <b>A</b>                       | <b>Class VII</b>               |

5.2. For projects which do not exceed Five Hundred Thousand Dollars (\$500,000.00), County may accept a Bid Bond, Performance Bond and Payment Bond from a surety company which has twice the minimum surplus and capital required by the Florida Office of Insurance Regulation at the time the solicitation is issued, if the surety company is otherwise in compliance with the provisions of the Florida Insurance Code, and if the surety company holds a currently valid Certificate of Authority issued by the United States Department of the Treasury under Section 9304 to 9308 of Title 31 of the United States Code. The Certificate and Affidavit (Form 007500-4) so certifying should be submitted with the Bid Bond and also with the Performance Bond and Payment Bond.

5.3. More stringent requirements of any grantor agency are set forth within the Supplemental Conditions. If there are no more stringent requirements, the provisions of this article shall apply.

## ARTICLE 6 INDEMNIFICATION

Contractor shall indemnify and hold harmless County, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the performance of this Contract. To the extent considered necessary by Contract Administrator and County Attorney, any sums due Contractor under this Contract may be retained by County until all of County's claims for indemnification pursuant to this Contract have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by County. These indemnifications shall survive the term of this Contract.

## ARTICLE 7 INSURANCE REQUIREMENTS

7.1 The specific insurance coverage requirements for this project are identified in the Minimum Insurance Requirements section which is a part of the Contract Documents. For purposes of this article, the term "County" shall include Broward County and its members, officials, officers, and employees.

7.2 Contractor shall maintain, at its sole expense and at all times during the term of this Contract (unless a different time period is otherwise stated herein), at least the minimum limits of insurance coverage designated in the Contract Documents (inclusive of any amount provided by an umbrella or excess policy) in accordance with the terms and conditions stated in this article. All required insurance shall apply on a primary basis, and shall not require contribution from, any other insurance or self-insurance maintained by County. Any insurance, or self-insurance, maintained by County shall be in excess of, and shall not contribute with, the insurance provided by Contractor.

7.3 Insurers providing the insurance required by this Contract must either be: (1) authorized by a current certificate of authority issued by the State of Florida to transact insurance in the State of Florida, or (2) except with respect to coverage for the liability imposed by the Florida Workers' Compensation Act, an eligible surplus lines insurer under Florida law. In addition, each such insurer shall have and maintain throughout the period for which coverage is required, a minimum A. M. Best Company Rating of "A-" and a minimum Financial Size Category of "VII." To the extent insurance requirements are designated in the Minimum Insurance Requirements, the applicable policies shall comply with the following:

7.3.1 Commercial General Liability Insurance. Policy shall be no more restrictive than that provided by the latest edition of the standard Commercial General Liability Form (Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO), with the exception of endorsements specifically required by ISO or the State of Florida, and liability arising out of:

Mold, fungus, or bacteria

Terrorism  
Silica, asbestos or lead  
Sexual molestation  
Architects and engineers professional liability, unless coverage for professional liability is specifically required by this Contract.

County and Consultant shall be included on the policy (and any excess or umbrella policy) as “Additional Insureds” on a form no more restrictive than ISO form CG 20 10 (Additional Insured – Owners, Lessees, or Contractor). The policy (and any excess or umbrella policy) must be endorsed to waive the insurer’s right to subrogate against County.

Contractor shall maintain products/completed operations coverage for at least three (3) years after the final completion of the Work, unless a longer period is identified in the Minimum Insurance Requirements. In that case, the term specified in the Insurance Requirements shall supersede.

7.3.2 Business Automobile Liability Insurance. Policy shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of work under this Contract. County and Consultant shall be included on the policy (and any excess or umbrella policy) as “Additional Insureds.” The policy (and any excess or umbrella policy) must be endorsed to waive the insurer’s right to subrogate against County.

7.3.3 Workers’ Compensation/Employer’s Liability Insurance. Such insurance shall be no more restrictive than that provided by the latest edition of the standard Workers’ Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance (NCCI), with the exception of endorsements required by NCCI or the State of Florida. The policy must be endorsed to waive the insurer’s right to subrogate against County in the manner which would result from the attachment of the NCCI form “Waiver of our Right to Recover from Others Endorsement” (Advisory Form WC 00 03 13) with County scheduled thereon. Where appropriate, coverage shall be included for any applicable Federal or State employer’s liability laws including, but not limited to, the Federal Employer’s Liability Act, the Jones Act, and the Longshoreman and Harbor Workers’ Compensation Act.

In the event that Contractor provides all or a portion of the Workers’ Compensation/Employer’s Liability insurance required herein via a professional employer organization (“PEO”) or employee leasing company, any such Workers’ Compensation/Employer’s Liability insurance provided will only be deemed acceptable solely for the purposes of insuring Contractor’s enrolled employees. In addition, and notwithstanding the foregoing, in order to adequately protect the County against injuries to uninsured employees of Subcontractors and non-enrolled employees of Contractor,

Contractor must still procure, maintain, and furnish the County with evidence of a stand-alone separate Workers' Compensation/Employer's Liability insurance policy issued with Contractor as the named insured, and complying with all requirements for Contractor provided Workers' Compensation contained in the Contract. It is permissible for Contractor to exclude payroll of leased employees from such separate Workers' Compensation/Employer's Liability insurance policy.

7.3.4 Professional Liability Insurance. Such insurance shall cover Contractor for those sources of liability arising out of the rendering or failure to render professional services in the performance of the services required in this Contract. If policy provides coverage on a claims-made basis, such coverage must respond to all claims reported within at least three (3) years following the period for which coverage is required, unless a longer period is indicated in the Minimum Insurance Requirements.

7.3.5 Environmental Pollution Liability. Such insurance shall include clean-up costs and provide coverage to Contractor for liability resulting from pollution or other environmental impairment arising out of, or in connection with, work performed under this Contract, or which arises out of, or in connection with this Contract, including coverage for clean-up of pollution conditions and third-party bodily injury and property damage arising from pollution conditions. Such insurance shall also include Transportation Coverage and Non-Owned Disposal Sites coverage. Should policy provide coverage on a claims-made basis, the coverage shall be in force and effect to respond to all claims reported within at least three years following the period for which coverage is required, unless a longer period is indicated in the Minimum Insurance Requirements, and which would have been covered had the coverage been provided on an occurrence basis.

County and Consultant shall be included as "Additional Insureds" on the policy. Contractor shall be responsible for all deductibles in the event of a claim.

7.3.6 Property Insurance, Builder's Risk, or Installation Floater. Such insurance shall be in force and evidenced to County as a condition precedent to the Notice to Proceed for construction. Coverage shall be "All Risks," Completed Value form with a deductible not to exceed Ten Thousand Dollars (\$10,000) each claim for all perils except wind and flood. For the perils of wind and flood, Contractor shall maintain a deductible that is commercially feasible which does not exceed five (5%) of the "values at risk at the time of loss" unless otherwise approved by County's Risk Management Division.

Sublimits: With respect to coverage for the peril of wind, the policy shall not be subject to any sublimit which is less than Fifty Million Dollars (\$50,000,000) per occurrence. With respect to the peril of Flood, the policy shall not be subject to any sublimit which is less than Ten Million Dollars (\$10,000,000) per occurrence. Any sublimit for wind or flood lower than those identified in the foregoing must be approved by the County's Risk Management Division.

Waiver of Occupancy Clause or Warranty-Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the building(s), addition(s) or structure(s) in the course of construction shall not be occupied without specific endorsement of the policy. The Policy must be endorsed to provide that the Builder's Risk coverage will continue to apply until final acceptance of the building(s), addition(s) or structure(s) by County.

The Builder's Risk policy shall reflect County as an "Additional Insured" and as a loss payee.

The Builder's Risk policy(ies) shall be endorsed to waive the insurer's rights of subrogation against County.

County reserves the right to provide property insurance covering the materials, equipment and supplies that are intended for specific installation in the Project while such materials, equipment and supplies are located at the Project site (this coverage will be specifically to cover property under construction or similar coverage), in transit, and while temporarily located away from the Project site for the purpose of repair, adjustment or storage at the risk of one (1) of the insured parties. This coverage will not cover any of the contractors' or subcontractors' tools, equipment, machinery or provide any business interruption or time element coverage to the contractors.

If County elects to purchase property insurance or provide for coverage under its existing insurance for this Project, then in that case, the insurance required to be carried by the Contractor may be modified to account for the insurance being provided by County. Such modification may also include execution of Waiver of Subrogation documentation.

In the event that a claim occurs for this Project and is made upon County's insurance policy, Contractor shall be responsible for up to the first Fifty Thousand Dollars (\$50,000) of the deductible amount for such claim.

7.4 Within fifteen (15) days after the full execution of this Contract or notification of award, whichever is earlier, Contractor shall provide to County satisfactory evidence of the insurance required in this Contract with the exception of property, builder's risk or installation floater coverage. With respect to the Workers' Compensation/Employer's Liability Insurance, Professional Liability and Business Automobile Liability Insurance, an appropriate Certificate of Insurance identifying the project and signed by an authorized representative of the insurer shall be satisfactory evidence of insurance. With respect to the Commercial General Liability, an appropriate Certificate of Insurance identifying the project, signed by an authorized representative of the insurer, and copies of the actual additional insured endorsements as issued on the policy(ies) shall be satisfactory evidence of such insurance.

7.5 Coverage is not to cease and is to remain in force until County determines all performance required of Contractor is completed. If any of the insurance coverage will expire prior to the completion of the Services, proof of insurance renewal shall be provided to County prior to the policy's expiration.

7.6 Contractor shall provide County thirty (30) days' advance notice of any cancellation of the policy except in cases of cancellation for non-payment for which County shall be given ten (10) days' advance notice.

7.7 Contractor shall provide, within thirty (30) days after receipt of a written request from County, a copy of the policies providing the coverage required by this Contract. Contractor may redact provisions of the policies that are not relevant to the insurance required by this Contract.

7.8 County and Contractor, each for itself and on behalf of its insurers, to the fullest extent permitted by law without voiding the insurance required hereunder, waive all rights against the other party and any of the other party's contractors, subcontractors, agents and employees for damages or loss to the extent covered and paid for by any insurance maintained by the other party.

7.9 If Contractor uses a Subcontractor, Contractor shall require each Subcontractor to endorse County and Consultant as "Additional Insureds" on the Subcontractor's Commercial General Liability policy.

## **ARTICLE 8 LABOR AND MATERIALS**

8.1. Unless otherwise provided herein, Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

8.2. Contractor shall at all times enforce strict discipline and good order among its employees and subcontractors at the Project site and shall not employ on the Project any unfit person or anyone not skilled in the Work to which they are assigned.

## **ARTICLE 9 ROYALTIES AND PATENTS**

All fees, royalties, and claims for any invention, or pretended inventions, or patent of any article, material, arrangement, appliance, or method that may be used upon or in any manner be connected with the construction of the Work or appurtenances, are hereby included in the prices stipulated in this Contract for said Work.

## **ARTICLE 10 WEATHER**

Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for a change in the Contract Time pursuant to Article 40. These time extensions are justified only when rains or other inclement weather conditions or related adverse soil conditions result in Contractor being unable to work at least fifty percent (50%) of the normal workday on controlling items of work identified on the accepted schedule or updates due to adverse weather conditions.

## **ARTICLE 11 PERMITS, LICENSES, AND IMPACT FEES**

11.1. Except as otherwise provided within the Special Instructions for Vendors, all permits and licenses required by federal, state or local laws, rules, and regulations necessary for the prosecution of the Work undertaken by Contractor pursuant to this Contract shall be secured and paid for by Contractor. It is Contractor's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the Work to be performed and valid for the jurisdiction in which the Work is to be performed for all persons working on the Project for whom a Certificate of Competency is required.

11.2. Impact fees levied by any municipality shall be paid by Contractor. Contractor shall be reimbursed only for the actual amount of the impact fee levied by the municipality as evidenced by an invoice or other acceptable documentation issued by the municipality. Reimbursement to Contractor in no event shall include profit or overhead of Contractor.

## **ARTICLE 12 RESOLUTION OF DISPUTES**

12.1. To prevent all disputes and litigation, it is agreed by the Parties hereto that, Consultant shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of this Contract and fulfillment of this Contract as to the character, quality, amount and value of any work done and materials furnished, or proposed to be done or furnished under or, by reason of, this Contract and Consultant's decisions of all claims, questions, difficulties and disputes shall be final and binding to the extent provided in Section 12.2. Any claim, question, difficulty, or dispute which cannot be resolved by mutual agreement of the Contract Administrator and Contractor shall be submitted to Consultant in writing within five (5) calendar days from the date of impasse. Unless a different period of time is set forth herein, Consultant shall notify the Contract Administrator and Contractor in writing of Consultant's decision within fourteen (14) calendar days from the date of the receipt of the claim, question, difficulty, or dispute, unless Consultant requires additional time to gather information or allow the Parties to provide additional information. Except for disputes directly related to the promptness of payment as set forth in Section 5.1 of this Contract, all nontechnical administrative disputes shall be determined by the Contract Administrator pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, Contractor, Consultant, and Contract Administrator shall act in good faith to mitigate any



potential damages including utilization of construction schedule changes and alternate means of construction.

12.2. In the event the determination of a dispute under this article is unacceptable to either party hereto, the party objecting to the determination must notify the other party in writing within ten (10) calendar days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract Time or Contract Price adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) calendar days after Final Completion of the Work, the Parties shall participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. Neither party shall commence litigation prior to the expiration of the sixty (60) day mediation period. The mediator shall be mutually agreed upon by the Parties. Should any objection not be resolved in mediation, the Parties retain all their legal rights and remedies provided under State law. **A PARTY SPECIFICALLY WAIVES ALL OF ITS RIGHTS, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR CONTRACT TIME AND CONTRACT PRICE ADJUSTMENTS PROVIDED IN THE CONTRACT, INCLUDING ITS RIGHTS AND REMEDIES UNDER STATE LAW, IF SAID PARTY FAILS TO COMPLY IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS ARTICLE.**

### ARTICLE 13 INSPECTION OF WORK

13.1. Consultant and County shall at all times have access to the Work, and Contractor shall provide proper facilities for such access and for inspecting, measuring and testing.

13.1.1. Should this Contract, Consultant's instructions, any laws, ordinances, or any public authority require any of the Work to be specially tested or approved, Contractor shall give Consultant timely notice of readiness of the Work for testing. If the testing or approval is to be made by an authority other than County, timely notice shall be given of the date fixed for such testing. Testing shall be made promptly, and, where practicable, at the source of supply. If any of the Work should be covered up without approval or consent of Consultant, it must, if required by Consultant, be uncovered for examination and properly restored at Contractor's expense.

13.1.2. Reexamination of any of the Work may be ordered by Consultant with prior written approval by the Contract Administrator, and if so ordered, the Work must be uncovered by Contractor. If such Work is found to be in accordance with this Contract, County shall pay the cost of reexamination and replacement by means of a Change Order. If such Work is not in accordance with this Contract, Contractor shall pay such cost.

13.2. Inspectors shall have no authority to permit deviations from, nor to relax any of the provisions of, this Contract, or to delay the Project by failure to inspect the materials and work with reasonable promptness, without the written permission or instruction of Consultant.

13.3. The payment of any compensation, whatever may be its character or form, or the giving of any gratuity or the granting of any favor by Contractor to any inspector, directly or indirectly, is strictly prohibited, and any such act on the part of Contractor will constitute a breach of this Contract.

#### **ARTICLE 14 SUPERINTENDENCE AND SUPERVISION**

14.1. The orders of County are to be given through Consultant, which instructions are to be strictly and promptly followed in every case. Contractor shall keep on the Project during its progress, a full-time, competent, English-speaking superintendent and any necessary assistants, all satisfactory to Consultant. The superintendent shall not be changed except with the written consent of Consultant, unless the superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ. The superintendent shall represent Contractor and all directions given to the superintendent shall be as binding as if given to Contractor and will be confirmed in writing by Consultant upon the written request of Contractor. Contractor shall give efficient supervision to the Work, using its best skill and attention.

14.2. Daily, Contractor's superintendent shall record, at a minimum, the following information in a bound log: the day; date; weather conditions and how any weather condition affected progress of the Work; time of commencement of Work for the day; the Work being performed; materials, labor, personnel, equipment and subcontractors at the Project site; visitors to the Project site, including representatives of County, Consultant, regulatory representatives; any event that caused or contributed a delay to the critical path of the Project, any special or unusual conditions or occurrences encountered; and the time of termination of Work for the day. All information shall be recorded in the daily log in ink. The daily log shall be kept on the Project site and shall be available at all times for inspection and copying by County and Consultant.

14.3. The Contract Administrator, Contractor, and Consultant shall meet at least every two (2) weeks or as determined by the Contract Administrator, during the course of the Work to review and agree upon the Work performed to date and to establish the controlling items of Work for the next two (2) weeks. Consultant shall publish, keep, and distribute minutes and any comments thereto of each such meeting.

14.4. If Contractor, in the course of prosecuting the Work, finds any discrepancy between this Contract and the physical conditions of the locality, or any errors, omissions, or discrepancies in this Contract, it shall be Contractor's duty to immediately inform Consultant, in writing, and Consultant will promptly review the same. Any Work done after such discovery, until authorized, will be done at Contractor's sole risk.

14.5. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with this Contract. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

## ARTICLE 15 COUNTY'S RIGHT TO TERMINATE CONTRACT

15.1. If Contractor fails to begin the Work within fifteen (15) calendar days after the Project Initiation Date, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule, or if Contractor shall fail to perform any material term set forth in this Contract, or if Contractor shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, or if Contractor is placed 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, Florida Statutes, or if Contractor provides a false certification submitted pursuant to Section 287.135, Florida Statutes, the Contract Administrator may give notice in writing to Contractor and its Surety of such delay, neglect, or default, specifying the same with a notice to cure. If Contractor, within a period of ten (10) calendar days after such notice, shall not proceed in accordance therewith, then County's awarding authority for this Contract may, upon written certificate from Consultant of the fact of such delay, neglect, or default and Contractor's failure to comply with such notice, terminate the services of Contractor, exclude Contractor from the Project site and take the prosecution of the Work out of the hands of Contractor, and appropriate or use any or all materials and equipment on the Project site as may be suitable and acceptable. In such case, Contractor shall not be entitled to receive any further payment until the Project is completed. In addition County may enter into an agreement for the completion of the Project according to the terms and provisions of this Contract, or use such other methods as in the Contract Administrator's sole opinion shall be required for the completion of the Project according to the terms and provisions of this Contract, or use such other methods as in the Contract Administrator's sole opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs and charges incurred by County, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to Contractor. In case the damages and expenses so incurred by County shall exceed the unpaid balance, then Contractor shall be liable and shall pay to County the amount of said excess.

15.2. If, after notice of termination of Contractor's right to proceed, it is determined for any reason that Contractor was not in default, the rights and obligations of County and Contractor shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth in Section 15.3 below.

15.3. This Contract may be terminated for convenience in writing by County upon ten (10) days written notice to Contractor (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, Contractor shall be paid for all Work executed and actual expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by Contractor relating to commitments which had become firm prior to the termination. Payment shall include reasonable profit for

Work and services performed as limited by Article 39 hereof. All actual expenses incurred shall have sufficient back-up documentation to verify that such expenses were actually incurred by Contractor. No payment shall be made for profit for Work and services which have not been performed.

15.4. Upon receipt of Notice of Termination pursuant to Sections 15.1, 15.3, or 15.5, Contractor shall promptly discontinue all affected Work unless the Notice of Termination directs otherwise and deliver or otherwise make available to County all data, drawings, specifications, reports, estimates, summaries, and such other information as may have been required by this Contract whether completed or in process.

15.5. This Contract may also be terminated by the Board:

15.5.1. Upon the disqualification of Contractor as a CBE firm by County's Director of the Office of Economic and Small Business Development ("OESBD") if Contractor's status as CBE firm was a factor in the award of this Contract and such status was misrepresented by Contractor;

15.5.2. Upon the disqualification of Contractor by County's Director of the OESBD due to fraud, misrepresentation, or material misstatement by Contractor in the course of obtaining this Contract or attempting to meet the CBE contractual obligations;

15.5.3. Upon the disqualification of one or more of Contractor's CBE participants by County's Director of the OESBD if any such participant's status as a CBE firm was a factor in the award of this Contract and such status was misrepresented by Contractor or such participant;

15.5.4. Upon the disqualification of one or more of Contractor's CBE participants by County's Director of the OESBD if such CBE participant attempted to meet its CBE contractual obligations through fraud, misrepresentation, or material misstatement;

15.5.5. If Contractor is determined by County's Director of the OESBD to have been knowingly involved in any fraud, misrepresentation, or material misstatement concerning the CBE status of its disqualified CBE participant.

## **ARTICLE 16   SUSPENSION OF WORK**

Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the County. No Work shall be delayed or postponed pending resolution of any disputes or disagreements except as the Contractor and County may otherwise agree in writing. Suspension of Work by Contractor during any dispute or disagreement with County shall entitle County to terminate this Contract for cause.

## ARTICLE 17 PROJECT RECORDS AND RIGHT TO AUDIT

17.1 Audit Rights and Retention of Records. Contractor shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Contract or until resolution of any audit findings, whichever is longer. Contract Records shall, upon reasonable notice, be open to County inspection and subject to audit and reproduction during normal business hours. County audits and inspections pursuant to this article may be performed by any County representative (including any outside representative engaged by County). County may conduct audits or inspections at any time during the term of this Contract and for a period of three years after the expiration or termination of this Contract (or longer if required by law). County may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with Contractor's employees, Subcontractors, vendors, or other labor.

17.2 County shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County. County reserves the right to conduct such audit or review at Contractor's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. Contractor agrees to provide adequate and appropriate work space. Contractor shall provide County with reasonable access to the Contractor's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract.

Contract Records include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers and memoranda, and any and all other documents that pertain to rights, duties, obligations, or performance under this Contract. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations or performance under this Contract, whether by Contractor or Subconsultants, or otherwise necessary to adequately permit evaluation and verification of any or all of the following:

- a) Compliance with Contract
- b) Compliance with County's code of ethics
- c) Compliance with Contract provisions regarding the pricing of Change Orders
- d) Accuracy of Contractor representations regarding the pricing of invoices
- e) Accuracy of Contractor representations related to claims submitted by the Contractor including subcontractors, or any of its other payees.

In addition to the normal documentation Contractor typically furnishes to the County, in order to facilitate efficient use of County resources when reviewing or auditing the Contractor's billings

and related reimbursable cost records, the Contractor agrees to furnish (upon request) the following types of information in the specified computer readable file format(s):

| Type of Record  | File format    |
|---|----------------|
| Monthly Job Cost Detail   | .pdf and Excel |
| Detailed Job Cost History To Date   | .pdf and Excel |
| Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)   | .pdf and Excel |
| Total Job to date Labor Distribution detail (if not already included in the detailed Job Cost History to date)  | .pdf and Excel |
| Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project  | .pdf           |
| Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project  | .pdf           |
| Daily Superintendent Reports  | .pdf           |
| Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to Subcontractors, etc.) | .pdf and Excel |
| Copies of Executed Subcontracts with all Subcontractors   | .pdf           |
| Copies of all executed Change Orders issued to Subcontractors   | .pdf           |
| Copies of all documentation supporting all reimbursable job costs (Subcontractor payment applications, vendor invoices, internal cost charges, etc.)                  | .pdf           |

17.3 Contractor shall, by written contract, require its Subcontractors to agree to the requirements and obligations of this article.

17.4 Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County’s disallowance and recovery of any payment reliant upon such entry.

17.5 If an audit inspection or examination in accordance with this article discloses overpricing or overcharges to County of any nature by Contractor or its Subcontractors in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County’s audit shall be reimbursed to County by Contractor in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of any such audit or inspection shall be made within thirty (30) days from presentation of County’s findings to Contractor.

## ARTICLE 18 RIGHTS OF VARIOUS INTERESTS

Whenever work being done by County’s forces or by other contractors is contiguous to or within the limits of Work covered by this Contract, the respective rights of the various interests involved shall be established by the Contract Administrator to secure the completion of the various portions of the Work in general harmony.

## ARTICLE 19 EXPLOSIVES

When the use of explosives is necessary in the prosecution of the Work, Contractor shall exercise the utmost care in handling and usage of such explosives to the protection of life and property. All explosives shall be stored in a safe manner and storage places shall be clearly marked "Dangerous-Explosives" and placed in the care of competent watchmen. When such use of explosives becomes necessary, Contractor shall furnish to County proof of coverage, adequately providing public liability and property damage insurance as a rider attached to its regular policies, unless otherwise included.

## ARTICLE 20 DIFFERING SITE CONDITIONS

In the event that during the course of the Work Contractor encounters subsurface or concealed conditions at the Project site which differ materially from those shown on this Contract and from those ordinarily encountered and generally recognized as inherent in work of the character called for in this Contract; or unknown physical conditions of the Project site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in this Contract, Contractor, without disturbing the conditions and before performing any Work affected by such conditions, shall, within twenty-four (24) hours of their discovery, notify Contract Administrator and Consultant in writing of the existence of the aforesaid conditions. Consultant and Contract Administrator shall, within two (2) business days after receipt of Contractor's written notice, investigate the site conditions identified by Contractor. If, in the sole opinion of Contract Administrator, the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the Work, whether or not charged as a result of the conditions, Contract Administrator may recommend an equitable adjustment to the Contract Price, or the Contract Time, or both. If Contract Administrator and Contractor cannot agree on an adjustment in the Contract Price or Contract Time, the adjustment shall be referred to Consultant for determination in accordance with the provisions of Article 12. No request by Contractor for an equitable adjustment to this Contract under this provision shall be allowed unless Contractor has given written notice to Contract Administrator in strict accordance with the provisions of this article. **No request for an equitable adjustment or change to the Contract Price or Contract Time for differing site conditions shall be allowed if made after the date certified by Contract Administrator as the date of substantial completion.**

## ARTICLE 21 PLANS AND WORKING DRAWINGS

County, through Consultant, shall have the right to modify the details of the plans and specifications, to supplement the plans and specifications with additional plans, drawings or additional information as the Work proceeds, all of which shall be considered as part of this Contract. In case of disagreement between the written and graphic portions of this Contract, the written portion shall govern.

## **ARTICLE 22 CONTRACTOR TO CHECK PLANS, SPECIFICATIONS, AND DATA**

Contractor shall verify all dimensions, quantities and details shown on the plans, specifications or other data received from Consultant, and shall notify Consultant of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery. Contractor will not be allowed to take advantage of any error, omission or discrepancy, as full instructions will be furnished by Consultant. Contractor shall not be liable for damages resulting from errors, omissions or discrepancies in this Contract unless Contractor recognized such error, omission or discrepancy and knowingly failed to report it to Consultant.

## **ARTICLE 23 CONTRACTOR'S RESPONSIBILITY FOR DAMAGES AND ACCIDENTS**

23.1. Contractor shall accept full responsibility for the Work against all loss or damage of whatsoever nature sustained until final acceptance by County, and shall promptly repair any damage done from any cause whatsoever, except as provided in Article 30.

23.2. Contractor shall be responsible for all materials, equipment and supplies pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged, or destroyed prior to final acceptance by County, Contractor shall replace same without cost to County, except as provided in Article 30.

## **ARTICLE 24 WARRANTY**

Contractor warrants to County that all materials and equipment furnished under this Contract will be new unless otherwise specified and that all of the Work will be of good quality, free from faults and defects, and in conformance with this Contract. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by Consultant, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 26 herein.

## **ARTICLE 25 SUPPLEMENTARY DRAWINGS**

25.1. When, in the opinion of Consultant, it becomes necessary to explain the Work to be done more fully, or to illustrate the Work further, or to show any changes which may be required, supplementary drawings, with specifications pertaining thereto, will be prepared by Consultant.

25.2. The supplementary drawings shall be binding upon Contractor with the same force as this Contract. Where such supplementary drawings require either less or more than the original quantities of Work, appropriate adjustments shall be made by Change Order.



## **ARTICLE 26 DEFECTIVE WORK**

26.1. Consultant shall have the authority to reject or disapprove Work which Consultant finds to be defective. If required by Consultant, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

26.2. Should Contractor fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of this Contract within the time indicated in writing by Consultant, County shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by County in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor, or may be charged against the Performance Bond. In the event of failure of Contractor to make all necessary repairs promptly and fully, County may declare Contractor in default.

26.3. If, within one (1) year after Substantial Completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by this Contract, or by any specific provision of this Contract, any of the Work is found to be defective or not in accordance with this Contract, Contractor, after receipt of written notice from County, shall promptly correct such defective or nonconforming Work within the time specified by County without cost to County, to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under this Contract, including, but not limited to, Article 24 hereof and any claim regarding latent defects.

26.4. Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered, or obligate County to final acceptance.

## **ARTICLE 27 TAXES**

Contractor shall pay all applicable sales, consumer, use and other taxes required by law. Contractor is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

## **ARTICLE 28 SUBCONTRACTS**

28.1. Each Subcontractor must possess certificates of competency and licenses required by law. Contractor shall have a continuing obligation to notify the Contract Administrator and Consultant of any change in Subcontractors.

28.2. Contractor shall not employ any subcontractor against whom County or Consultant may have a reasonable objection. Contractor shall not be required to employ any subcontractor against whom Contractor has a reasonable objection.

28.3. Contractor shall be fully responsible for all acts and omissions of its subcontractors and of persons directly or indirectly employed by its subcontractors and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract shall create any contractual relationship between any Subcontractor and County or any obligation on the part of County to pay or to see the payment of any monies due any Subcontractor. County or Consultant may furnish to any Subcontractor evidence of amounts paid to Contractor on account of specific work performed.

28.4. Contractor agrees to bind specifically every Subcontractor to the applicable terms and conditions of this Contract for the benefit of County.

28.5.  Contractor shall perform the Work with its own organization, amounting to not less than fifty percent (50%) of the Contract Price.

#### **ARTICLE 29 SEPARATE CONTRACTS**

29.1. County reserves the right to let other contracts in connection with this Project. Contractor shall afford other persons reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate this Work with theirs.

29.2. If any part of Contractor's Work depends for proper execution or results upon the work of any other persons, Contractor shall inspect and promptly report to Consultant any defects in such Work that render it unsuitable for such proper execution and results. Contractor's failure to so inspect and report shall constitute an acceptance of the other person's work as fit and proper for the reception of Contractor's Work, except as to defects which may develop in other Contractor's Work after the execution of Contractor's Work.

29.3. Contractor shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractor on the site. Should such interference or impact occur, Contractor shall be liable to the affected contractor for the cost of such interference or impact.

29.4. To insure the proper execution of subsequent Work, Contractor shall inspect the Work already in place and shall at once report to Consultant any discrepancy between the executed Work and the requirements of this Contract.

#### **ARTICLE 30 USE OF COMPLETED PORTIONS**

30.1. County shall have the right at its sole option to take possession of and use any completed or partially completed portions of the Project. Such possession and use shall not be deemed an acceptance of any of the Work not completed in accordance with this Contract. If such possession and use increases the cost of or delays the Work, Contractor shall be entitled to reasonable extra

compensation or reasonable extension of time or both, as recommended by Consultant and approved by County.

30.2. In the event County takes possession of any completed or partially completed portions of the Project, the following shall occur:

30.2.1. County shall give notice to Contractor in writing at least thirty (30) calendar days prior to County's intended occupancy of a designated area.

30.2.2. Contractor shall complete to the point of Substantial Completion the designated area and request inspection and issuance of a Certificate of Substantial Completion (Form 007600-1) from Consultant.

30.2.3 Upon Consultant's issuance of a Certificate of Substantial Completion, County will assume full responsibility for maintenance, utilities, subsequent damages of County and public, adjustment of insurance coverages and start of warranty for the occupied area.

30.2.4 Contractor shall complete all items noted on the Certificate of Substantial Completion within the time specified by Consultant on the Certificate of Substantial Completion, as soon as possible and request final inspection and final acceptance of the portion of the Work occupied. Upon completion of final inspection and receipt of an application for final payment, Consultant shall issue a Final Certificate of Payment relative to the occupied area.

30.2.5. If County finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by County and Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

### **ARTICLE 31 LANDS OF WORK**

31.1. County shall provide, as may be indicated in this Contract, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands as are designated by County for the use of Contractor.

31.2. Contractor shall provide, at Contractor's own expense and without liability to County, any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials. Contractor shall furnish to County copies of written permission obtained by Contractor from the owners of such land.

## **ARTICLE 32 LEGAL RESTRICTIONS AND TRAFFIC PROVISIONS**

Contractor shall conform to and obey all applicable laws, regulations, or ordinances with regard to labor employed, hours of work and Contractor's general operations. Contractor shall conduct its operations so as not to close any thoroughfare, nor interfere in any way with traffic on railway, highways, or water, without the written consent of the proper authorities.

## **ARTICLE 33 LOCATION AND DAMAGE TO EXISTING FACILITIES, EQUIPMENT, OR UTILITIES**

33.1. Utility lines in the Project area have been shown on the plans. However, County does not guarantee that all lines are shown, or that the ones indicated are in their true location. It shall be Contractor's responsibility to identify and locate all underground and overhead utility lines or equipment affecting or affected by the Project. No additional payment will be made to Contractor because of discrepancies in actual and plan location of utilities, and additional costs suffered as a result thereof.

33.2. Contractor shall notify each utility company involved at least thirty (30) days prior to the start of construction to arrange for positive underground location, relocation or support of its utility where that utility may be in conflict with or endangered by the proposed construction. Relocation of water mains or other utilities for the convenience of Contractor shall be paid by Contractor. All charges by utility companies for temporary support of its utilities shall be paid for by Contractor. All costs of permanent utility relocation to avoid conflict shall be the responsibility of the utility company involved. No additional payment will be made to Contractor for utility relocations, whether or not said relocation is necessary to avoid conflict with other lines.

33.3. Contractor shall schedule the Work in such a manner that the Work is not delayed by the utility providers relocating or supporting their utilities. Contractor shall coordinate its activities with any and all public and private utility providers occupying the right-of-way. No compensation will be paid to Contractor for any loss of time or delay.

33.4. All overhead, surface or underground structures and utilities encountered are to be carefully protected from injury or displacement. All damage to such structures is to be completely repaired within a reasonable time; needless delay will not be tolerated. County reserves the right to remedy such damage by ordering outside parties to make such repairs at the expense of Contractor. All such repairs made by Contractor are to be made to the satisfaction of the utility owner. All damaged utilities must be replaced or fully repaired. All repairs are to be inspected by the utility owner prior to backfilling.

## **ARTICLE 34 VALUE ENGINEERING**

Contractor may request substitution of materials, articles, pieces of equipment, or any changes that reduce the Contract Price by making such request to Consultant in writing. Consultant will be the sole judge of acceptability, and no substitute will be ordered, installed, used or initiated without Consultant's prior written acceptance which will be evidenced by either a Change Order

or an approved Shop Drawing. However, any substitution accepted by Consultant shall not result in any increase in the Contract Price or Contract Time. By making a request for substitution, Contractor agrees to pay directly to Consultant all Consultant's fees and charges related to Consultant's review of the request for substitution, whether or not the request for substitution is accepted by Consultant. Any substitution submitted by Contractor must meet the form, fit, function, and life cycle criteria of the item proposed to be replaced and there must be a net dollar savings including Consultant review fees and charges. If a substitution is approved, the net dollar savings shall be shared equally between Contractor and County and shall be processed as a deductive Change Order. County may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute approved after award of this Contract.

### **ARTICLE 35 PAYMENT BY COUNTY FOR TESTS**

Except when otherwise specified in this Contract, the expense of all tests requested by Consultant shall be borne by County and performed by a testing firm chosen by Consultant. For road construction projects, the procedure for making tests required by Consultant will be in conformance with the most recent edition of the State of Florida, Department of Transportation Standard Specifications for Road and Bridge Construction. The cost of any required test which Contractor fails shall be paid for by Contractor.

### **ARTICLE 36 CHANGE IN THE WORK OR TERMS OF CONTRACT**

36.1. Without invalidating this Contract and without notice to any surety, County reserves and shall have the right from time to time to make such increases, decreases, or other changes in the character or quantity of the Work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any extra or additional Work within the scope of this Project must be accomplished by means of appropriate Field Orders and Supplemental Instructions or Change Orders.

36.2. Any changes to the terms of this Contract must be contained in a written document, executed by the Parties hereto, with the same formality and of equal dignity prior to the initiation of any Work reflecting such change. This section shall not prohibit the issuance of Change Orders executed only by County as hereinafter provided.

### **ARTICLE 37 FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS**

37.1. The Contract Administrator, through Consultant, shall have the right to approve and issue Field Orders setting forth written interpretations of the intent of this Contract and ordering minor changes in Work execution, providing the Field Order involves no change in the Contract Price or the Contract Time.

37.2. Consultant shall have the right to approve and issue Supplemental Instructions setting forth written orders, instructions, or interpretations concerning this Contract or its performance,

provided such Supplemental Instructions involve no change in the Contract Price or the Contract Time.

### **ARTICLE 38 CHANGE ORDERS**

38.1. Changes in the quantity or character of the Work within the scope of the Project which are not properly the subject of Field Orders or Supplemental Instructions, including all changes resulting in changes in the Contract Price, or the Contract Time, shall be authorized only by Change Orders approved in advance and issued in accordance with the provisions of the Broward County Procurement Code, as amended from time to time.

38.2. Contractor shall not start work on any changes requiring an increase in the Contract Price or the Contract Time until a Change Order setting forth the adjustments is approved by the County. Upon receipt of a Change Order, Contractor shall promptly proceed with the Work set forth within the document.

38.3. In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, County reserves the right at its sole option to either terminate this Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed Work; or submit the matter in dispute to Consultant as set forth in Article 12 hereof. During the pendency of the dispute, and upon receipt of a Change Order approved by County, Contractor shall promptly proceed with the change in the Work involved and advise the Consultant and Contract Administrator in writing within seven (7) calendar days of Contractor's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

38.4. On approval of any Contract change increasing the Contract Price, Contractor shall ensure that the performance bond and payment bond are increased so that each reflects the total Contract Price as increased.

38.5. Under circumstances determined necessary by County, Change Orders may be issued unilaterally by County.

### **ARTICLE 39 VALUE OF CHANGE ORDER WORK**

39.1. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

39.1.1. Where the Work involved is covered by unit prices contained in this Contract, by application of unit prices to the quantities of items involved, subject to the provisions of Section 39.7.

39.1.2. By mutual acceptance of a lump sum which Contractor and County acknowledge contains a component for overhead and profit.

39.1.3. On the basis of the "cost of work," determined as provided in Sections 39.2 and 39.3, plus a Contractor's fee for overhead and profit which is determined as provided in Section 39.4.

39.2. The term "cost of work" means the sum of all direct costs necessarily incurred and paid by Contractor in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by County, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Section 39.3.

39.2.1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work described in the Change Order under schedules of job classifications agreed upon by County and Contractor. Payroll costs for employees not employed full time on the Work covered by the Change Order shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay application thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing the Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized by County.

39.2.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless County deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to County. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to County and Contractor shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by County with the advice of Consultant and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

39.2.3. Payments made by Contractor to Subcontractors for work performed by Subcontractors. If required by County, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to County who will then determine, with the advice of Consultant, which bids will be accepted. If the Subcontract provides that the Subcontractor is to be paid on the basis of cost of the work

plus a fee, the Subcontractor's cost of the work shall be determined in the same manner as Contractor's cost of the work. All Subcontractors shall be subject to the other provisions of this Contract insofar as applicable.

39.2.4. Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the work described in the Change Order only if pre-approved in writing by the Contract Administrator.

39.2.5. Supplemental costs including the following:

39.2.5.1. The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work except for local travel to and from the site of the Work.

39.2.5.2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remains the property of Contractor.

39.2.5.3. Sales, use, or similar taxes related to the Work, and for which Contractor is liable, imposed by any governmental authority.

39.2.5.4. Deposits lost for causes other than Contractor's negligence; royalty payments and fees for permits and licenses.

39.2.5.5. The cost of utilities, fuel and sanitary facilities at the site.

39.2.5.6. Receipted minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

39.2.5.7. Cost of premiums for additional bonds and insurance required because of changes in the Work.

39.3. The term "cost of the work" shall not include any of the following:

39.3.1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, schedulers, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in its principal or a branch office for general administration of the Work and not specifically included in the agreed-upon schedule of



job classifications referred to in subsection 39.2.1, all of which are to be considered administrative costs covered by Contractor's fee.

39.3.2. Expenses of Contractor's principal and branch offices other than Contractor's office at the site.

39.3.3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

39.3.4. Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by this Contract to purchase and maintain the same, except for additional bonds and insurance required because of changes in the Work.

39.3.5. Costs due to the negligence or neglect of Contractor, any Subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

39.3.6. Other overhead or general expense costs of any kind.

39.4. Contractor's fee allowed to Contractor for overhead and profit shall be determined as follows:

39.4.1. A mutually acceptable fixed fee, or if none can be agreed upon; or

39.4.2. A fee based on the following percentages of the various portions of the cost of the work:

39.4.2.1. For costs incurred under subsections 39.2.1 and 39.2.2, Contractor's fee shall not exceed ten percent (10%).

39.4.2.2. For costs incurred under subsection 39.2.3, Contractor's fee shall not exceed seven and one half percent (7.5%); and if a subcontract is on the basis of cost of the work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall not exceed ten percent (10%); and

39.4.2.3. No fee shall be payable on the basis of costs itemized under subsections 39.2.4 and 39.2.5 (except subsection 39.2.5.3) and Section 39.3.

39.5. The amount of credit to be allowed by Contractor to County for any such change which results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any, however, Contractor shall not be entitled to claim lost profits for any Work not performed.

39.6. Whenever the cost of any Work is to be determined pursuant to Sections 39.2 and 39.3, Contractor will submit in a form acceptable to Consultant an itemized cost breakdown together with the supporting data.

39.7. Where the quantity of any item of the Work that is covered by a unit price is increased or decreased by more than twenty percent (20%) from the quantity of such Work indicated in this Contract, an appropriate Change Order shall be issued to adjust the unit price, if warranted.

39.8. Whenever a change in the Work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, Contractor shall submit an initial cost estimate acceptable to Consultant and Contract Administrator.

39.8.1. Breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost.

39.8.2. Whenever a change involves Contractor and one or more Subcontractors and the change is an increase in the Contract Price, overhead and profit percentage for Contractor and each Subcontractor shall be itemized separately.

39.9. Each Change Order must state within the body of the Change Order whether it is based upon unit price, negotiated lump sum, or "cost of the work."

#### **ARTICLE 40 NOTIFICATION AND CLAIM FOR CHANGE OF CONTRACT TIME OR CONTRACT PRICE**

40.1. Any claim for a change in the Contract Time or Contract Price shall be made by written notice by Contractor to the Contract Administrator and to Consultant within five (5) calendar days of the commencement of the event giving rise to the claim or knowledge by Contractor of the claim and the notice shall state the general nature and cause of the claim. Thereafter, within twenty (20) calendar days of the termination of the event giving rise to the claim or knowledge of the claim, written notice of the extent of the claim with supporting information and documentation shall be submitted to the Contract Administrator and Consultant (hereinafter "Claim Notice"). The Claim Notice shall include Contractor's written notarized certification that the adjustment claimed is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. If the Contract Administrator and Contractor cannot resolve a claim for changes in the Contract Time or Contract Price as set forth in a proper Claim Notice within twenty (20) calendar days after receipt by the Contract Administrator and Consultant, then Contractor shall submit the claim to Consultant within five (5) calendar days from the date of impasse in accordance with Article 12 hereof. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT TIME OR CONTRACT PRICE SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.**

40.2. The Contract Time will be extended in an amount equal to time lost on critical Work items due to delays beyond the control of and through no fault or negligence of Contractor if a claim is made therefor as provided in Section 40.1. Such delays shall include, but not be limited to, acts or neglect by any separate contractor employed by County, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

#### **ARTICLE 41 NO DAMAGES FOR DELAY**

No claim for damages or any claim, other than for an extension of time, shall be made or asserted against County by reason of any delays except as provided herein. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from County for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Contractor for actual delays due solely to fraud, bad faith or active interference on the part of County or its Consultant. Otherwise, Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

#### **ARTICLE 42 EXCUSABLE DELAY; COMPENSABLE; NON-COMPENSABLE**

42.1. Excusable Delay. Delay which extends the completion of the Work and which is caused by circumstances beyond the control of Contractor or its Subcontractors, suppliers, or vendors are Excusable Delay. Contractor is entitled to a time extension of the Contract Time for each day the Work is delayed due to Excusable Delay. Contractor shall document its claim for any time extension as provided in Article 40 hereof. Failure of Contractor to comply with Article 40 hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay. Excusable Delay may be compensable or non-compensable.

42.1.1. Compensable Excusable Delay. Excusable Delay is compensable when (i) the delay extends the Contract Time, (ii) is caused by circumstances beyond the control of the Contractor or its subcontractors, suppliers or vendors, and (iii) is caused solely by fraud, bad faith or active interference on the part of County or its agents. In no event shall Contractor be compensated for interim delays which do not extend the Contract Time. Contractor shall be entitled to direct and indirect costs for Compensable Excusable Delay. Direct costs recoverable by Contractor shall be limited to the actual additional costs allowed pursuant to Article 39 hereof.

County and Contractor recognize and agree that the amount of Contractor's precise actual indirect costs for delay in the performance and completion of the Work is impossible to determine as of the date of execution of this Contract, and that proof of the

precise amount will be difficult. Therefore, indirect costs recoverable by the Contractor shall be liquidated on a daily basis for each day the Contract Time is delayed due to a Compensable Excusable Delay. These liquidated indirect costs shall be paid to compensate Contractor for all indirect costs caused by a Compensable Excusable Delay and shall include, but not be limited to, lost profits, all profit on indirect costs, home office overhead, acceleration, loss of earnings, loss of productivity, loss of bonding capacity, loss of opportunity and all other indirect costs incurred by Contractor. The amount of liquidated indirect costs recoverable shall be Three Hundred Ninety-five Dollars (\$395.00) per day for each calendar day this Contract is delayed due to a Compensable Excusable Delay.

42.1.2. Non-Compensable Excusable Delay. When Excusable Delay is (i) caused by circumstances beyond the control of Contractor, its Subcontractors, suppliers and vendors; (ii) is caused by circumstances beyond the control of the County or Consultant, or (ii) is caused jointly or concurrently by Contractor or its Subcontractors, suppliers or vendors and by the County or Consultant, then Contractor shall be entitled only to a time extension and no further compensation for the delay.

#### **ARTICLE 43 SUBSTANTIAL COMPLETION**

When Contractor considers that the Work, or a portion thereof designated by County pursuant to Article 30 hereof, has reached Substantial Completion, Contractor shall so notify the Contract Administrator and Consultant in writing. Consultant and the Contract Administrator shall then promptly inspect the Work. When Consultant, on the basis of such an inspection, determines that the Work or designated portion thereof is substantially complete, it will then prepare a Certificate of Substantial Completion (Form 007600-1). The Contract Administrator shall affix its determination to the Certificate of Substantial Completion which shall establish the Date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of County and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance. The Consultant and the Contract Administrator shall develop and Contractor shall review the list of all Work yet to be completed by Contractor to satisfy the requirements of this Contract for Final Completion and to make the Work satisfactory and acceptable. The list shall be provided to Contractor within five (5) days after final development and review. If the final list is not provided within the stated five (5) days, the Contract Time for completion shall be extended by the number of days exceeding the five (5) days. The failure to include any items of corrective Work on such list does not alter the responsibility of Contractor to complete all of the Work in accordance with this Contract. Warranties required by this Contract shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Contract Administrator and Contractor for their written acceptance of the responsibilities assigned to them in the Certificate of Substantial Completion.

#### **ARTICLE 44 NO INTEREST**

44.1 County shall not be liable to pay any interest to Contractor for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Contract. This section shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

44.2 If the preceding section is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Contract, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

#### **ARTICLE 45 SHOP DRAWINGS**

45.1. Contractor shall submit Shop Drawings as required by the Technical Specifications. The purpose of the Shop Drawings is to show the suitability, efficiency, technique of manufacture, installation requirements, details of the item and evidence of its compliance or noncompliance with this Contract.

45.2. Within thirty (30) calendar days after the Project Initiation Date specified in the Notice to Proceed, Contractor shall submit to Consultant a complete list of preliminary data on items for which Shop Drawings are to be submitted and shall identify the critical items. Approval of this list by Consultant shall in no way relieve Contractor from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with this Contract. This procedure is required in order to expedite final approval of Shop Drawings.

45.3. After the approval of the list of items required in Section 45.2 above, Contractor shall promptly request Shop Drawings from the various manufacturers, fabricators, and suppliers. Contractor shall include all shop drawings and other submittals in its certification.

45.4. Contractor shall thoroughly review and check the Shop Drawings and each and every copy shall show this approval thereon.

45.5. If the Shop Drawings show or indicate departures from the Contract requirements, Contractor shall make specific mention thereof in its letter of transmittal. Failure to point out such departures shall not relieve Contractor from its responsibility to comply with this Contract.

45.6. Consultant shall review and approve Shop Drawings within twenty-one (21) calendar days from the date received, unless said Drawings are rejected by Consultant for material reasons. Consultant's approval of Shop Drawings will be general and shall not relieve Contractor of responsibility for the accuracy of such Drawings, nor for the proper fitting and construction of

the work, nor for the furnishing of materials or Work required by this Contract and not indicated on the Drawings. No Work called for by Shop Drawings shall be performed until the said Drawings have been approved by Consultant. Approval shall not relieve Contractor from responsibility for errors or omissions of any sort on the Shop Drawings.

45.7. No approval will be given to partial submittals of Shop Drawings for items which interconnect or are interdependent where necessary to properly evaluate the design. It is Contractor's responsibility to assemble the Shop Drawings for all such interconnecting or interdependent items, check them and then make one submittal to Consultant along with its comments as to compliance, noncompliance, or features requiring special attention.

45.8. If catalog sheets or prints of manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink.

45.9. Contractor shall submit the number of copies required by Consultant. Resubmissions of Shop Drawings shall be made in the same quantity until final approval is obtained.

45.10. Contractor shall keep one set of Shop Drawings marked with Consultant's approval at the job site at all times.

#### **ARTICLE 46 FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS**

46.1. The entire responsibility for establishing and maintaining line and grade in the field lies with Contractor. Contractor shall maintain an accurate and precise record of the location and elevation of all pipe lines, conduits, structures, maintenance access structures, handholes, fittings and the like and shall prepare record or "as-built" drawings of the same which are sealed by a Professional Surveyor. Contractor shall deliver these records in good order to Consultant as the Work is completed. The cost of all such field layout and recording work is included in the prices bid for the appropriate items. All record drawings shall be made on reproducible paper and shall be delivered to Consultant prior to, and as a condition of, final payment.

46.2. Contractor shall maintain in a safe place at the Project site one record copy of all Drawings, Plans, Specifications, Addenda, written amendments, Change Orders, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings shall be available at all times to Consultant for reference. Upon Final Completion of the Project and prior to Final Payment, these record documents, samples and Shop Drawings shall be delivered to the Contract Administrator.

46.3. Prior to, and as a condition precedent to Final Payment, Contractor shall submit to County Contractor's record drawings or as-built drawings acceptable to Consultant.

## **ARTICLE 47 SAFETY AND PROTECTION**

47.1. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

47.1.1. All employees on the work site and other persons who may be affected thereby;

47.1.2. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Project site; and

47.1.3. Other property at the Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

47.2. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in subsections 47.1.2 and 47.1.3 above, caused directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Consultant has issued a notice to County and Contractor that the Work is acceptable except as otherwise provided in Article 30 hereof.

47.3. Contractor shall designate a responsible member of its organization at the Work site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to County.

## **ARTICLE 48 FINAL BILL OF MATERIALS**

Contractor shall be required to submit to County and Consultant a final bill of materials with unit costs for each bid item for supply of materials in place. This shall be an itemized list of all materials with a unit cost for each material and the total shall agree with unit costs established for each Contract item. A Final Certificate for Payment cannot be issued by Consultant until Contractor submits the final bill of materials and Consultant verifies the accuracy of the units of Work.

## **ARTICLE 49 PROJECT SIGN**

Any requirements for a project sign shall be as set forth within the Technical Specifications section.

## **ARTICLE 50    CLEANING UP; COUNTY'S RIGHT TO CLEAN UP**

Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Project, Contractor shall remove all its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery and surplus materials. If Contractor fails to clean up during the prosecution of the Work or at the completion of the Work, County may do so and the cost thereof shall be charged to Contractor. If a dispute arises between Contractor and separate contractors as to their responsibility for cleaning up, County may clean up and charge the cost thereof to the contractors responsible therefore as Consultant shall determine to be just.

## **ARTICLE 51    HURRICANE PRECAUTIONS**

51.1. During such periods of time as are designated by the National Weather Services as being a hurricane watch or warning, the Contractor, at no cost to the County, shall take all precautions necessary to secure the Project site in response to all threatened storm events, regardless of whether the County or Consultant has given notice of same.

51.2. Compliance with any specific hurricane watch or warning precautions will not constitute additional work.

51.3. Suspension of the Work caused by a threatened or actual storm event, regardless of whether the County has directed such suspension, will entitle the Contractor to additional Contract Time as noncompensable, excusable delay, and shall not give rise to a claim for compensable delay.

## **ARTICLE 52    REMOVAL OF EQUIPMENT**

In case of termination of this Contract before completion for any cause whatsoever, Contractor, if notified to do so by County, shall promptly remove any part or all of Contractor's equipment and supplies from the property of County, failing which County shall have the right to remove such equipment and supplies at the expense of Contractor.

## **ARTICLE 53    DOMESTIC PARTNERSHIP REQUIREMENT**

Contractor certifies and represents that it will comply with the County's Domestic Partnership Act (Section 16½-157 of the Broward County Code of Ordinances) during the entire term of this Contract. The failure of the Contractor to comply shall be a material breach of this Contract, entitling the County to pursue any and all remedies provided under applicable law including, but not limited to (1) retaining all monies due or to become due the Contractor until the Contractor complies; (2) termination of this Contract; and (3) suspension or debarment of the Contractor from doing business with the County.



## **ARTICLE 54 EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE**

54.1. No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Contractor shall include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

54.2. Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

54.3. By execution of this Contract, Contractor represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). County hereby materially relies on such representation in entering into this Contract. An untrue representation of the foregoing shall entitle County to terminate this Contract and recover from Contractor all monies paid by County pursuant to this Contract, and may result in debarment from County's competitive procurement activities.

54.4. Contractor shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the award and administration of this Agreement. Failure by Contractor to carry out any of the requirements of this article shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or exercise any other remedy provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

54.5. Contractor will meet the required CBE goal by utilizing the CBE firms listed in Exhibit A (or a CBE firm substituted for a listed firm, if permitted) for twenty-five percent (25%) of total Services under this Agreement (the "Commitment").

54.6. In performing the Services, Contractor shall utilize the CBE firms listed in Exhibit A for the scope of work and the percentage of work amounts identified on each Letter of Intent. Promptly upon execution of this Agreement by County, Contractor shall enter into formal contracts with the CBE firms listed in Exhibit A and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

54.7. Each CBE firm utilized by Contractor to meet the CBE goal must be certified by OESBD. Contractor shall inform County immediately when a CBE firm is not able to perform or if Contractor believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify the good faith efforts of Contractor to substitute the CBE firm with another CBE firm. Whenever a CBE firm is terminated for any reason, Contractor shall provide written notice

to OESBD and, upon written approval of the Director of OESBD, shall substitute another CBE firm in order to meet the CBE goal, unless otherwise provided in this Agreement or agreed in writing by the Parties. Such substitution shall not be required in the event the termination results from modification of the Scope of Services and no CBE firm is available to perform the modified Scope of Services; in which event, Contractor shall notify County, and OESBD may adjust the CBE goal by written notice to Contractor. Contractor shall not terminate a CBE firm for convenience without County's prior written consent, which consent shall not be unreasonably withheld.

54.8. The Parties stipulate that if Contractor fails to meet the Commitment, the damages to County arising from such failure are not readily ascertainable at the time of contracting. If Contractor fails to meet the Commitment and County determines, in the sole discretion of the OESBD Program Director, that Contractor failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the Commitment, Contractor shall pay County liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Contractor failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by County, such liquidated damages amount shall be either credited against any amounts due from County, or must be paid to County within thirty (30) days after written demand. These liquidated damages shall be County's sole contractual remedy for Contractor's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. Any failure to meet the Commitment attributable solely to force majeure, changes to the scope of work by County, or inability to substitute a CBE Subcontractor where the OESBD Program Director has determined that such inability is due to no fault of Contractor, shall not be deemed a failure by Contractor to meet the Commitment.

54.9. Contractor acknowledges that the Board, acting through OESBD, may make minor administrative modifications to Section 1-81, Broward County Code of Ordinances, which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Contractor and shall include a deadline for Contractor to notify County in writing if Contractor concludes that the modification exceeds the authority under this section. Failure of Contractor to timely notify County of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Contractor.

54.10. County may modify the required participation of CBE firms under this Agreement in connection with any amendment, extension, modification, change order, or Work Authorization to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, change orders, or Work Authorizations, increases the initial Agreement price by ten percent (10%) or more. Contractor shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, change order, or Work Authorization, and shall report such efforts, along with evidence thereof, to OESBD.

54.11. Contractor shall provide written monthly reports to the Contract Administrator attesting to Contractor's compliance with the CBE goal stated in this article. In addition, Contractor shall allow County to engage in onsite reviews to monitor Contractor's progress in achieving and maintaining Contractor's contractual and CBE obligations. The Contract Administrator in conjunction with OESBD shall perform such review and monitoring, unless otherwise determined by the County Administrator.

54.12. The Contract Administrator may increase allowable retainage or withhold progress payments if Contractor fails to demonstrate timely payments of sums due to all Subcontractors and suppliers. The presence of a "pay when paid" provision in a Contractor's contract with a CBE firm shall not preclude County or its representatives from inquiring into allegations of nonpayment.

## **ARTICLE 55 PUBLIC RECORDS**

55.1. Public Records. To the extent Contactor is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Contactor shall:

55.1.1. Keep and maintain public records required by County to perform the services under this Contract;

55.1.2. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

55.1.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Contract and following completion or termination of this Contract if the records are not transferred to County; and

55.1.4. Upon completion or termination of this Contract, transfer to County, at no cost, all public records in possession of Provider or keep and maintain public records required by County to perform the services. If Contactor transfers the records to County, Contactor shall destroy any duplicate public records that are exempt or confidential and exempt. If Contactor keeps and maintains public records, Contactor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

The failure of Contactor to comply with the provisions of this article shall constitute a material breach of this Contract entitling County to exercise any remedy provided in this Contract or under applicable law.

A request for public records regarding this Contract must be made directly to County, who will be responsible for responding to any such public records requests. Contactor will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Contactor contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Florida Statutes Chapter 119) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT – TRADE SECRET." In addition, Contactor must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Florida Statutes Section 812.081 and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Contactor as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Contactor. Contactor shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the non-disclosure of any Trade Secret Materials in response to a records request by a third party.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES CHAPTER 119 TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 831-0745 , mmoscardini@broward.org, 2555 W. COPANS ROAD, POMPANO BEACH, FLORIDA 33069.**

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**007300 SUPPLEMENTAL GENERAL CONDITIONS**

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**007343 SUPPLEMENTAL WAGE REQUIREMENTS**

1.  Prevailing Wage Rate Ordinance - This Project is not federally funded. If this Contract is in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00), the following sections shall apply.

1.1. The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as published in the Federal Register (latest revision is attached hereto).

1.2. All mechanics, laborers, and apprentices, employed or working directly upon the site of the Work shall be paid in accordance with the above referenced wage rates. Contractor shall post notice of these provisions at the site of the Work in a prominent place where it can be easily seen by the workers.

1.3. If the Parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, the Contract Administrator shall submit the question, together with its recommendation, to the County Administrator for final determination.

1.4. In the event it is found by the Contract Administrator that any laborer or mechanic or apprentice employed by Contractor, or any subcontractor directly on the site of the Work has been or is being paid at a rate of wages less than the rate of wages required by the ordinance, the Contract Administrator may (1) by written notice to Contractor terminate its right to proceed with the Work or such part of Work for which there has been a failure to pay said required wages; and (2) prosecute the Work or portion thereof to completion by contract or otherwise. Whereupon, Contractor and its sureties shall be liable to County for any excess costs occasioned to County thereby.

1.5. Sections 1.1 through 1.4 above shall apply to this Contract to the extent that it is (1) a prime contract subject to the ordinance; or (2) a subcontract also subject to the ordinance under such prime Contract.

1.6. Contractor shall maintain payrolls and basic records relating thereto during the course of the Work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the Work. Such records shall contain the name and address of each such employee; its current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.

1.7. Contractor shall submit, with each requisition for payment, a signed and sworn "Statement of Compliance" (007500-8) attesting to compliance with the Prevailing Wage Ordinance, Section 26-5 of the Broward County of Ordinances, as amended.

1.8. The Contract Administrator may withhold or cause to be withheld from Contractor so much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and guards employed by Contractor or any Subcontractor on the work, the full amount of wages required by this Contract.

1.9. If Contractor or any Subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the Work all or part of the wages required by this Contract, the Contract Administrator may, after written notice to Contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

2.  Federal Grant Projects:

2.1. By virtue of the fact that the funding of this Project will be delivered in full or in part from the United States government through \_\_\_\_\_[Federal Agency]\_\_\_\_\_ and referred to as \_\_\_\_\_ No. \_\_\_\_\_, Federal assurances must follow the grant application in addition to any and all supervening assurances set forth in Rules and Regulations published in Federal Register or C.F.R.

2.2. Clauses, terms, or conditions required by federal grantor agency are hereby attached and made a part of this Contract.

EXHIBIT A  
Broward County Board of  
County Commissioners

PNC2120004C1



**LETTER OF INTENT**  
BETWEEN BIDDER/OFFEROR AND  
COUNTY BUSINESS ENTERPRISE (CBE) FIRM/SUPPLIER

This form is to be completed and signed for each CBE firm. If the PRIME is a CBE firm, please indicate the percentage performing with your own forces.

Solicitation No.: PNC2120004C1

Project Title: Regional Master Meter Improvements - Bid Package No. 2

Bidder/Offeror Name: Intercounty Engineering, Inc.

Address: 1925 NW 18 Street City: Pompano Beach State: FL Zip: 33069

Authorized Representative: Stephen Polk Phone: 954-972-9800

CBE Firm/Supplier Name: Fleming Executive Group, Inc.

Address: 515 E Las Olas Blvd, Suite 120 City: Fort Lauderdale State: FL Zip: 33301

Authorized Representative: Keith D. Fleming Phone: 786.295.0639

- A. This is a letter of intent between the bidder/offeror on this project and a CBE firm for the CBE to perform work on this project.
- B. By signing below, the bidder/offeror is committing to utilize the above-named CBE to perform the work described below.
- C. By signing below, the above-named CBE is committing to perform the work described below.
- D. By signing below, the bidder/offeror and CBE affirm that if the CBE subcontracts any of the work described below, it may only subcontract that work to another CBE.

**Work to be performed by CBE Firm**

| Description                           | NAICS <sup>1</sup> | CBE Contract Amount <sup>2</sup> | CBE Percentage of Total Project Value |
|---------------------------------------|--------------------|----------------------------------|---------------------------------------|
| <u>General Construction, Plumbing</u> |                    | <u>\$ 300,000</u>                | <u>31</u> %                           |
|                                       |                    |                                  | %                                     |
|                                       |                    |                                  | %                                     |

**AFFIRMATION:** I hereby affirm that the information above is true and correct.

**CBE Firm/Supplier Authorized Representative**

Signature: [Signature] Title: President Date: 01/22/20

**Bidder/Offeror Authorized Representative**

Signature: [Signature] Title: Vice President Date: 01/22/20

<sup>1</sup> Visit [Census.gov](http://Census.gov) and select **NAICS** to search and identify the correct codes. Match type of work with NAICS code as closely as possible.

<sup>2</sup> To be provided only when the solicitation requires that bidder/offeror include a dollar amount in its bid/offer.

*In the event the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.*

Rev.: June 2018

Compliance Form No. 004