

F. Consent Agenda - Natural Resources Management
ITEM 4.



AGENDA REPORT
May 21, 2019

Sykes Creek Phase I Muck Removal Project Request to Advertise

SUBJECT:

Sykes Creek Phase I Muck Removal Project Request to Advertise

FISCAL IMPACT:

FY 18-19 \$ 1,500,000 State Grant No. S0714

FY 19-20 \$ 2,900,000 Save Our Indian River Lagoon Trust Fund (1260)

DEPT/OFFICE:

Natural Resources Management

REQUESTED ACTION:

It is requested that the Board authorize: 1) advertisement of the Sykes Creek Phase I Muck Removal Project; 2) the Chairperson to execute all associated construction contracts and change orders, subject to County Attorney and Risk Management review and approval; 3) the County Manager to execute task orders up to \$250,000 for engineering services necessary to complete this Capital Improvement Project; and 4) budget change requests associated with the Sykes Creek Phase I Muck Removal Project.

SUMMARY EXPLANATION and BACKGROUND:

Sykes Creek is one of five muck dredging project locations partially funded by State Legislative appropriations in 2014-2017. The balance of funds for this project is included in the approved the 2019 Save Our Indian River Lagoon Plan Update. The Sykes Creek Phase I Muck Removal Project Area (shown in Attachment A) is fully permitted and draft bid documents have been prepared.

On October 12, 2017 the County advertised a Request for Proposals (RFP) for the entire Sykes Creek Muck Removal Project. As part of the Sykes Creek RFP, the County requested that perspective bidders (a) use the permitted dredged material management area (DMMA) on an island adjacent to the Kiwanis Island Park, or b) identify a separate DMMA location for dewatering the dredged material. The RFP ranking criteria was based on cost and merit of the proposed technical approach.

On December 20, 2017 three RFP packages were received. On January 17, 2018 the appointed selection committee met with the proposers to review responses and conduct a question and answer session. The highest ranked bidder proposed the use of a 60 acre parcel located on North Merritt Island approximately 3 miles north of the Barge Canal. Concerns were identified by County staff with all three RFP packages including required

zoning and permitting actions that may have significantly delayed or blocked the project. The Board of County Commissioners, in regular session on April 24, 2018 rejected all proposals and directed staff to work with the engineer of record to revise the scope of the project to include specific spoil management sites and work with Florida Inland Navigation District (FIND) to secure temporary use of their DMMA.

County staff has worked with the engineer of record to divide the Sykes Creek Muck Removal Project into two phases. Phase I includes dredging of approximately 60,000 cubic yards of muck from the area east of Kiwanis Island park (Exhibit A). The previously permitted island adjacent to Park will be utilized as the DMMA where the material will be placed permanently. It should be noted that the City of Cocoa Beach has used the same approach for their Phase II dredge project, placing dredged material on an island.

Phase II will encompass the remainder of the original Sykes Creek Muck Removal Project. For Phase II, the material will be pumped and dewatered at: (a) the FIND DMMA or (b) a vacant parcel just east of Kiwanis Island park that is being considered for acquisition. Once dewatered, spoil material will be hauled away for permanent disposal. Site acquisition is currently contingent upon acceptable contract terms, receipt of a grant and obtaining appropriate zoning approvals.

In regular session on April 9, 2019, the Board approved the 2019 Save Our Indian River Lagoon (SOIRL) Project Plan Update. In Table 8-9a of the 2019 Plan Update, funding is allocated for the Sykes Creek Muck Removal Project. Additionally, state grant funding is allocated under Muck Dredging contract No. S0714. There is approximately 60,000 cubic yard (CY) of muck to be dredged in the Sykes Creek Phase I Muck Removal Project area. Cost for Phase I is estimated to be approximately \$4.4 million.

Dredging requires significant engineering services for permitting, construction oversight and monitoring. Often the engineering task orders, due to the scale of the projects, exceed \$100,000 and time is lost bringing them individually to the Board for approval. Because getting these projects executed promptly is important to the health of the Lagoon, it is requested the County Manager be authorized to execute engineering service task orders up to \$250,000 as necessary to support both Phase I and Phase II of the Sykes Creek Muck Removal Project.

CLERK TO THE BOARD INSTRUCTIONS:

None

ATTACHMENTS:

Description

- ▣ **Exhibit A - Project Map**
- ▣ **Exhibit B - Draft Contract**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

May 22, 2019

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item F.4., Sykes Creek Phase I Muck Removal Project Request to Advertise

The Board of County Commissioners, in regular session on May 21, 2019, authorized advertisement of the Sykes Creek Phase I Muck Removal Project; authorized the Chair to execute all associated construction contracts and change orders, subject to County Attorney and Risk Management review and approval; authorized the County Manager to execute Task Orders up to \$250,000 for engineering services necessary to complete this Capital Improvement Project; and authorized any budget change requests associated with Sykes Creek Phase I Muck Removal Project. Enclosed are two executed Contracts.

Upon execution by all parties, please return a fully-executed Contracts to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/kp

cc: Finance
Budget

Exhibit A
Project Map

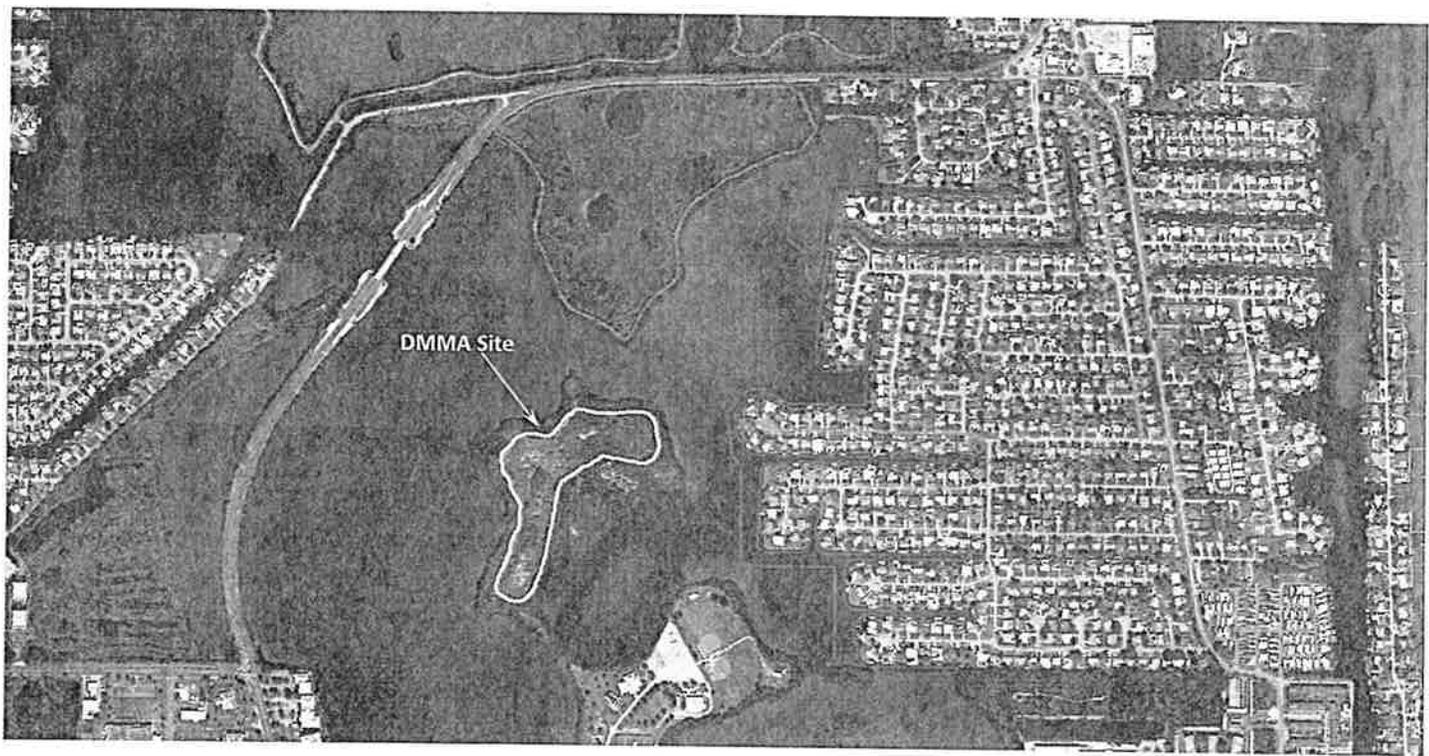


Exhibit B
Draft Contract

**BID DOCUMENTS FOR
SYKES CREEK PHASE I
MUCK REMOVAL PROJECT**

BID NO. X-X-XX-XX



PREPARED FOR:

**Brevard County Board Of County Commissioners
2725 Judge Fran Jamieson Way
Viera, FL 32940**

PREPARED BY:

Brevard County Purchasing Services

CONSTRUCTION DRAWINGS AND TECHNICAL SPECIFICATIONS

PREPARED BY:

**Taylor Engineering Inc.
10199 Southside Blvd.
Building 1, Suite 310
Jacksonville, Florida 32256**

Release Date:

XXXX XX, 2019

Non-Mandatory Pre-Bid Meeting:

**XXXX XX, 2019 @ X:XX PM
Viera Government Center
2725 Judge Fran Jamieson Way
Viera, FL 32940**

Bid Opening Date and Time:

XXXX XX, 2019 @ X:XX PM

TABLE OF CONTENTS
Sykes Creek Phase I Muck Removal Project

SECTION I	ADVERTISEMENT FOR BIDS	5
	• Contractor’s Checklist	
SECTION II	INSTRUCTIONS TO CONTRACTORS	9
	• Purchasing Definitions	
	• General Conditions, Terms & Provisions	
	• Obligation of Contractor to Inform Himself as to All Conditions Relating to Project	
	• Examination of Contract Documents	
	• Discrepancies	
	• Addenda, Modifications or Interpretations During Bidding	
	• Familiarity with Laws	
	• Preparation and Submission of Bids	
	• Disqualification of Contractors	
	• Bid Security	
	• Power of Attorney	
	• Bid Security Forfeited – Liquidated Damages	
	• Withdrawal of Bid	
	• Modification of Bids	
	• Opening of Bids	
	• Consideration of Bids	
	• Right to Accept or Reject Bids	
	• Award of Contract	
	• Execution of Contract	
	• Public Construction Performance and Payment Bonds	
	• Qualification of Sureties	
	• Interpretation of Estimated Quantities	
	• Substitutions and Equivalentents	
	• Oral Statements	
	• Pre-Qualification of Awarded Construction Contractor	
SECTION III	BID PROPOSAL AND RELATED FORMS.....	39
	• Bid Pricing Form	
	• Trench Safety Act Compliance	
	• Minority Employment Information	
	• Non-Collusion Affidavit of Prime Contractor	
	• Sworn Statement Pursuant to Section 287.133(3)(a). Florida Statutes on Public Entity Crime	
	• Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion	
	• Bid Bond Form	
	• Vendor Certification Regarding Scrutinized Companies Lists	

	<ul style="list-style-type: none"> • Right of Entry Form 	
SECTION IV	CONTRACTOR PREQUALIFICATION POLICY AND FORMS	53
	<ul style="list-style-type: none"> • BCC Policy BCC-28 • Contractor's Qualification Statement (AIA Document A305) Form • List of Major Suppliers and their Materials • List of Major Subcontractors and Value of their work 	
SECTION V	CONTRACT AND CERTIFICATE.....	67
	<ul style="list-style-type: none"> • Scope of the Work • The Contract Sum • Commencement and Completion of Work • Contractor's Acceptance of Conditions • Liquidated Damages • Partial and Final Payments • Additional Bond • Contract Documents • Attorney's Fees • Governing Laws • Compliance with Statutes • Venue • Conflict of Interest • Information Release/Grantor Recognition • Indemnification • Public Records Access • Witness and Signatures • Certificate 	
SECTION VI	CONTRACT BONDS AND SAMPLE CERTIFICATES	79
	<ul style="list-style-type: none"> • Public Construction Payment Bond • Certificate as to Corporate Principal for Payment Bond • Public Construction Performance and Guarantee Bond • Certificate as to Corporate Principal for Performance Bond 	
SECTION VII	GENERAL CONDITIONS	84
	<ul style="list-style-type: none"> • Abbreviations • Intent and Correlation of Documents • Notice and Service • Copies Furnished • Shop Drawings • Ownership of Drawings • Samples • Materials, Appliances, Employees 	

- Patents and Royalties
- Sales Tax and Excise Tax
- Supervision and Responsibility of the Contractor
- Pre-construction Conference
- Protection of Property and the Public
- Insurance
- Authority of Engineer
- Observation of the Work
- Examination of the Work
- Defective Work
- Alterations or Modifications in Drawings and Specifications
- Extra Work
- Dispute Resolution
- Failure to Perform Work
- Termination
- Assignment of Contract
- Subcontractors
- Separate Contracts
- Distribution of Work
- No Waiver of Legal Rights
- Scope of Payment and Pay Quantity
- Basis of Payment
- Partial and Final Payments
- Measurement and Payment
- Affidavit ad Release of Lien
 - Certification of Contractor
 - Application For Payment
 - Affidavit
 - Construction Change Order
 - Waiver of Rights Against Payment Bond Upon Monthly Payment
 - Waiver of Rights Against Payment Bond Upon Final Payment
- Materials Stored
- Field Sampling and Testing
- Cleanup
- Recovery Rights Subsequent to Final Payment
- General Guarantee
- Liquidated Damages
- Public Construction Performance and Payment Bonds
- Sunday Work, Night Work
- Existing Conditions – Video Recording
- Safety and Health Standards
- Maintenance of Drainage
- Staging Area

SECTION VIII SPECIAL CONDITIONS..... 124

- Standard Documents
- Coordination of Drawings, Specifications and Other Documents
- Representative for Contract Administration
- Use of Public Streets
- Care of Trees, Shrubs and Grass
- Damage to Existing Structures and Utilities
- Notification to Utility Companies
- Contract Time

ATTACHMENT A PRICE SHEET

ATTACHMENT B TECHNICAL SPECIFICATIONS

ATTACHMENT C CONSTRUCTION PLANS

ATTACHMENT D PERMITS & REPORTS

SECTION I
ADVERTISEMENT FOR BIDS

Sealed proposals will be received by the Board of County Commissioners of Brevard County, Florida, no later than 2:00 PM on XXX XX, 2019, in the Purchasing Office, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, Third Floor, Suite 303, Viera, Florida 32940, as follows:

Sykes Creek Phase I Muck Removal Project
Bid No. B-X-XX-XX

The Brevard County Board of County Commissioners (COUNTY) is soliciting proposals from qualified licensed and experienced Marine Contractors that are capable of implementing the dredging, dewatering and disposal of approximately 60,000 cubic yards of muck sediments from the Sykes Creek Project Area as described herein and as depicted in the Project Drawings. The dredging shall be accomplished by hydraulic dredging methods, with active dewatering. Dredge effluent will be treated for nutrient removal.

CONTRACTOR will have full use of the sediment management site without charge but will be responsible for construction of all temporary improvements, the removal and the ultimate disposition of the dredged material, and the removal of temporary improvements and restoration of the sediment management site to a natural, vegetated condition at the completion of the work.

Additional project details can be found within the Summary of Work, Technical Specifications, and the drawings.

PRE-BID MEETING:

A non-mandatory pre-bid meeting will be held on XXX XX, 2019 at X:XX PM in the Florida Room, located on the Third Floor of Building C in the Viera Government Center, 2725 Judge Fran Jamieson Way, Viera, FL 32940.

INFORMATION OR CLARIFICATION:

For information or questions concerning this Proposal, contact the purchasing manager, Steven Darling, Jr., Purchasing Services, at email: steven.darling@brevardfl.gov or phone (321) 617-7390. Such contact shall be for clarification purposes only. Changes, if any, to the Scope of Services or bid procedures, will be transmitted by written addendum through Purchasing Services. All questions must be submitted in writing to the purchasing liaison.

BID PREPARATION:

Proposals must be presented on the County proposal forms provided in Section III of the Specification and Contract Documents for the project. Proposals shall be submitted in duplicate, with the original marked "ORIGINAL" and a complete signed digital copy provided on Compact Disc or Flash Drive (USB). All the materials listed on the Contractor's Checklist must be submitted with the proposal package. The proposals must be for the project in its entirety. Failure to meet these requirements may result in bid being deemed as non-responsive. The

County will not reimburse contractors for any costs associated with the preparation and submittal of any responses to this Request for Bid.

The County reserves the right to allow for the clarification of questionable entries and for the correction of obvious mistakes.

BID SUBMITTAL PROCEDURE:

Bids shall be delivered in person or forwarded by special delivery registered mail. If forwarded by mail, the bid shall be placed in a sealed bid envelope enclosed in another separate envelope addressed to the Purchasing Division, Government Center, 2725 Judge Fran Jamieson Way, Building C, Third Floor, Suite 303, Viera, FL 32940.

All bids must be marked on the outside of the sealed bid envelope (for each project) as follows:

Sealed Bid

Bid No.: B-X-X-XX-XX Sykes Creek Phase I Muck Removal Project

Opening Date: XXX XX, 2019

Opening Time: 2:00 PM

Contractor's Name and Address: _____

The Purchasing Services date and time stamp clock will be the official time for when Bids are received. All Bids received after the due date and time will not be opened. **Note***Please ensure that if you use a third party carrier (Federal Express, Airborne, UPS, USPS, etc.) that they are properly instructed to deliver your bid only to Purchasing Services on the third (3rd) floor at the above address. **Contractors are advised that U.S. Postal Service 1st Class and Express mail is delivered to a P.O. Box and is not delivered to the Purchasing Services Office. Delivery via the USPS is at the Contractor's risk. To be considered, a bid must be accepted in Purchasing Services no later than the invitation to bid (ITB) closing date and time.** If the bid is delivered anywhere else, it may not reach Purchasing Services in time.

All contractors are hereby placed on notice that the County Commission and all staff (with exception of the purchasing staff) shall not be contacted about this bid. Public meetings are the only acceptable forums for the discussion of merits of services requested by the Invitation for Bid. Written correspondence in regards to bids may be submitted to the County Purchasing office at Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, Suite 303, Viera, FL 32940 or to steven.darling@brevardcounty.gov. Failure to adhere to these requirements could result in County Commission action to disqualify your firm from consideration of award.

Bids and bid pricing may be held by the County for contract award until September 30, 2019; for the purpose of reviewing the bids and investigating the qualifications of Contractors prior to awarding the Contract and having the Contractors accept the Contract and execute all necessary

documents. The County reserves the right to reject any or all bids and to waive any informality in the bidding.

The County reserves the right to rebid the Contract or contract modifications in accordance with the provisions of the Contract Documents, or where the work has not been previously initiated where the change increases the original Scope of Work and where the rebid process will not impact existing work by the awarded Contractor.

CONTRACTOR'S CHECKLIST

The items indicated are required for submission with your proposal. Failure to submit any items indicated as required may result in rejection of the proposal. Offers to provide required items after the date and time designated for the receipt of proposal will not be considered.

- Bid Pricing Form completed in Excel and submitted on Flash/USB drive**
- Trench Safety Act Compliance**
- Minority Employment/EEO Form(s)
For the bidding Contractor**
- Non-Collusion Affidavit of Prime Contractor**
- Sworn Statement Pursuant to Section 287.133(3)(A)
Florida Statutes on Public Entity Crime**
- Certification Regarding Debarment, Suspension
Ineligibility and Voluntary Exclusion**
- Vendor Certification Regarding Scrutinized Companies**
- Bid Bond**
- Right of Entry Form**
- References Form**
- E-Verify Affidavit**
- Copy of the fully executed E-Verify Memorandum of Understanding for the
business**
- Certificate of Insurance**

SECTION II
INSTRUCTIONS TO CONTRACTORS

PURCHASING DEFINITIONS:

ADDENDUM: A written explanation, interpretation, modification, correction, addition, deletion, or modification, affecting the Contract Documents, including Drawings and Specifications issued by the Owner or the Owner's Engineer and distributed to prospective Contractors prior to the bid opening.

AFFIDAVIT: The instrument which is to be signed by the Contractor and submitted to the Owner through the Owner's Engineer, upon completion of that job, showing that all bills have been paid. It shall also mean such instrument that may be requested by the Owner incident to partial payments.

ARTICLE: The prime subdivision of a section of these or any other referenced Specifications, Instructions to Contractors, Special Conditions, Supplemental Specifications, Technical Specifications, and General Conditions.

BIDDER: "Bidder" used herein refers to the dealer/manufacturer/business organization submitting a bid to the County in response to this invitation.

BID SECURITY or BID BOND: The security designated in the Bid to be furnished by the Contractor as guarantee that the Contractor will enter into the Contract for the work if the Contractor's proposal is accepted.

CALENDAR DAY: Any day, including Saturdays, Sundays and holidays, and regardless of the weather conditions.

CONTRACTOR: The term "CONTRACTOR" used herein refers to any dealer/manufacturer/business organization that will be awarded a contract pursuant to the terms, conditions and quotations of the bid.

CONTRACT DOCUMENTS: The Contract Documents, sometimes referred to as the "Drawings and Specifications", shall mean and include the following:

- Advertisement for Bids
- Instructions to Contractors
- Bid
- Proposal
- Bid Bond
- Contract
- Public Construction Payment Bond, Public Construction Performance Bond
- or letter of Credit
- General Conditions
- Special Conditions

- Supplemental Specifications
- Technical Specifications
- Addenda
- Drawings
- Certificate of Insurance
- Contract Modifications
- Warranties, Guarantees
- Signed written change orders
- Signed written task orders
- Signed construction cost directives
- Permits and Permit conditions
- Notice of Award
- Notice to Proceed

All of the above described contract documents comprise the entire Contract, whether or not the documents are maintained together as a single document

CHANGER ORDER: A written order signed by the Owner and Contractor and issued after execution of the Contract to the Contractor authorizing an addition, deletion, or revision in the work, or an adjustment in the Contract price or the Contract time. The term change order also includes any written order signed by the County Manager, within the scope of the monetary authority delegated to the Manager by the County Commission, and signed by the Engineer and Contractor. A change order may include matters such as incorrect information in the construction documents, unforeseen conditions, change of usage, added value of the project, or deletion of items or areas. All change orders must be approved by the Board of County Commissioners unless specific authority has been delegated to the County Manager or Department Director to authorize the work described in a change order prior to Board approval in circumstances where the change order complies with specific criteria approved by the Board.

COUNTY: The term "COUNTY" herein refers to the County of Brevard, Florida, and its duly authorized representatives.

COUNTY COMMISSION: The Board of County Commissioners of Brevard County, Florida.

CONSTRUCTION CHANGE DIRECTIVE: Written authorization prepared by the Owner and/or Project Engineer/Architect, signed by the Department, and the County Manager directing the addition, deletion, or revision in the Scope of Work.

DEPARTMENT: The Natural Resources Management Department of Brevard County, Florida.

DIRECTOR: The Director of the Natural Resources Management Department of Brevard County, Florida, or designee.

DRAWINGS: The official approved drawings, or drawings or exact reproductions thereof, which show the location, character, dimensions and details of the work to be done and which are to be considered as part of the Contract Documents, the same as though attached thereto.

DUE CAUSE: An applicable reason affecting and concerning the ability and fitness of the contractor(s) to perform to the specifications and requirements of the contract.

ENGINEER: See "Owner's Engineer".

EQUIPMENT: The machinery and equipment, together with the necessary supplies for upkeep and maintenance, and including the tools and apparatus necessary for the proper construction and acceptable completion of the work.

FORCE ACCOUNT WORK: Work performed in addition to that set forth in the original Contract or contract modifications, and which is paid for on the basis of actual cost of materials and labor, plus a fixed percentage of such costs, as shown on a complete Change Order form.

HEAVY DUTY: The item(s) to which the term "HEAVY DUTY" is applied shall exceed the usual quality and/or capacity supplied with standard production equipment and shall be able to withstand unusual strain, exposure, temperature, wear and use.

LETTER OF CREDIT: An irrevocable guarantee of payment issued by a bank on behalf of the Contractor under which the bank agrees to pay the Owner those amounts necessary to properly complete the Project work, up to the dollar amount of the Contract, should the Contractor fail to fulfill its contractual commitment to the Owner.

MATERIALS: Any substance proposed to be used in conjunction with the construction of any structure, facility or appurtenance, or of other work under the Contract.

NOTICES:

- Notice of Acceptance or Notice of Award: The official letter from the Owner advising the successful Contractor, that the Contractor has been awarded the Contract.
- Notice to Proceed: The official letter from the Owner to the Contractor instructing the Contractor to commence work within the number of days specified in the Contract.

OWNER: Brevard County, Florida, Board of County Commissioners, and their designee.

THE OWNER'S ENGINEER: Taylor Engineering. The Engineer is an agent of the Owner.

PERMIT SKETCHES: Schematics, maps, drawings and similar drawings attached to the permits for the project. The Contractor must comply with all permit conditions.

PERSON: The word "person" shall mean and include any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or capacity, whether appointed by a court or otherwise, and any combination of individuals or

"persons".

PLANS: See Drawings and see Permit Sketches.

PRINCIPAL: When used in the Bid Bond, Performance and Payment Bonds, the word "Principal" means the same as the word "Contractor".

PROJECT: This project consists of dredging, dewatering and disposal of approximately 60,000 cubic yards of organic sediment from the Sykes Creek Phase I Project Area as described herein and depicted in project drawings. The dredging shall be accomplished by hydraulic dredging methods.

PRONOUNS: The masculine pronoun shall include the feminine and neuter and the singular shall include the plural.

PROPOSAL: The offer of the Contractor for the work when completed and submitted on the prescribed proposal form, properly signed and guaranteed.

PROPOSAL FORM: The official form on which the Owner requires formal bids to be prepared and submitted.

PROVIDED: As used in the Specifications or upon the Drawings, "provided" shall be understood to mean "provided complete in place", that is, "furnished and installed". Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that references to the Drawings and/or Specifications accompanying these documents are intended unless otherwise expressly stated.

PUBLIC CONSTRUCTION PERFORMANCE AND PAYMENT BOND: The security instrument or instruments furnished by the Contractor and the Contractor's Surety as a guarantee that the Contractor will fulfill the terms of the Contract with the Owner for construction of the project in the time and manner prescribed in the Contract, Drawings, Specifications, and other Contract Documents. Said bonds shall be recorded by the Contractor upon execution of the contract by both parties.

QUALIFIED CONTRACTOR: The best Contractor who has the capability in all respects to fully perform the bid requirements, and has the financial stability, honesty, integrity, skill, business judgment, experience, facilities, and reliability necessary to assure good faith performance of the contract, as determined by reference to the Contractor's Qualification Statement, evaluations by County staff of the Contractor or its subcontractors' past performance for the Board, and any other information required by Board policies.

RESIDENT CONSTRUCTION MONITOR: An authorized representative or employee of the Owner assigned to the Project to make observations of the work performed by the Contractor.

RECORD/ASBUILT SURVEY DRAWING: A survey performed in accordance with the Florida Minimum Technical Standards as set forth in The Florida Administrative Code Chapter 5J-17.051 and 5J-17.052 (1) (a-d), and prepared by a licensed Florida Surveyor & Mapper. Said

survey is defined as a survey performed to obtain horizontal and/or vertical dimensional data so that constructed improvements may be located and delineated.

RESPONSIVE CONTRACTOR: A Contractor who has submitted a bid, which conforms in all respects to the requirements of the bid package, including, but not limited to, submission of the bid on required forms with all required information, signatures, and notarizations at the place and time specified.

SCOPE OF THE WORK: Includes the Work, as the term is herein defined, as well as the responsibility for performing and complying with all incidental matters pertaining thereto, as set out in the Contract Documents.

SPECIFICATIONS: The Instructions to Contractors, General Conditions, Special Conditions, Supplemental Specifications and such other documents as set forth in the Contract Documents.

STANDARD SPECIFICATIONS: Florida Department of Transportation - "Standard Specifications for Road and Bridge Construction", Latest Edition, except when superseded as otherwise noted.

STATE: State of Florida.

SUBCONTRACTOR: A firm supplying labor, materials, supplies, equipment, services, and other incidentals used directly or indirectly by the Contractor or Subcontractors. Such person has contractual relations with the Contractor, but not with the Owner.

SUBSTANTIAL COMPLETION: That point in the construction where all Essential Elements of the WORK are sufficiently complete in conformance with the Contract that the Owner has the beneficial use or occupancy of the Work for its intended purpose. At Substantial Completion, minor items and items that are seasonally restricted need not be completed, but the items that affect operational integrity and function of the facility must be capable of continuous use. Substantial Completion shall not be deemed to have occurred where 1) latent defects are revealed subsequent to use and occupation of the project by the OWNER or 2) where the scope of substantial defects in workmanship or materials are not readily observable or discoverable when use and occupancy of the project commenced.

SUPERINTENDENT: The Contractor's authorized executive representative is responsible and in charge of the work at all times.

SURETY: The corporate body which is bound by the Performance and Payment Bonds with and for the Contractor (who is primarily liable) and which engages to be responsible for the Contractor's acceptable performance of the work for which the Contract has been made and for the Contractor's prompt payment of all debts pertaining thereto.

WORK: Shall mean all tasks, actions, as well as the use of all materials, equipment, machinery, tools, apparatus, transportation and labor reasonably, expressly or impliedly required to be furnished and/or performed by the Contractor in order to complete the Project in compliance

with the terms of the Contract Documents, applicable permits, and permit conditions.

CONTRACT TERMS, PROVISIONS:

SUBMISSION OF BIDS: All bids shall be submitted in a sealed envelope. The bid number, title, and opening date shall be clearly displayed on the outside of the sealed envelope. The delivery of said bid to Purchasing Services prior to the specified opening date and time is solely and strictly the responsibility of the Contractor. Any bids received in Purchasing after the specified date and time will not be accepted.

EXECUTION OF BID: Bid must contain a manual signature of authorized representative in the space(s) provided. Bids must be typed or printed in ink. Use of erasable ink is not permitted. All corrections made by Contractor to any bid entry must be initialed. The company name and Federal Employer Identification Number (FEID) number shall appear in the space(s) provided.

BID OPENING: Bid opening shall be public on the date and time specified. Sealed bids received by an agency pursuant to invitations to bid are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) or within 30 days after bid or proposal opening, whichever is earlier. In accordance with Florida Statute 119.071(1)(b)2, the names of the firms submitting a competitive solicitation will be read aloud at this time of the opening. No details of the competitive solicitation will be released. Bid must be submitted on forms provided by the County. No other forms will be accepted. Fax, telephone, emailed, or verbal Bids are not acceptable and will not be considered. No bid may be modified after opening. No bid may be withdrawn after opening for a period of ninety (90) days unless otherwise specified.

BID TABULATIONS: Bid tabulations are posted to the following websites at: www.demandstar.com and VendorLink at www.myvendorlink.com.

CLARIFICATION/CORRECTION OF BID ENTRY: The County reserves the right to allow for the clarification of questionable entries and for the correction of OBVIOUS MISTAKES.

INTERPRETATION: No interpretation of the meaning of the specifications, or other contract documents will be made orally to any. Every request for such interpretation must be in writing, addressed to Purchasing Services at 2725 Judge Fran Jamieson Way, Bldg. C, 3rd Floor, Suite 303 Viera, FL 32940, or emailed to the attention of the applicable Procurement Analyst. To be given consideration, such requests must be received at least five (5) business days prior to the date fixed for the opening of the bid. Any and all such interpretation and supplemental instructions will be in the form of a written addendum. Failure of any Contractor to receive any such addendum or interpretation shall not relieve said Contractor from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents, whether or not the successful Contractor received a copy of such addendum, it being understood that all are responsible to verify that they have received any such addenda prior to submitting their bid.

EEO STATEMENT: Contractors must ensure that employees and applicants for employment are not discriminated against for reasons of race, color, age, religion, sex, national origin, or handicapped status. Minority and female-owned businesses are encouraged to participate. Brevard County is an equal opportunity employer.

PRICING: Firm prices shall be proposed and include FOB DESTINATION, all packing, handling, shipping charges, fuel surcharges and delivery, unless otherwise indicated, to any point within the County to a secure area or inside delivery. All prices, costs, and conditions shall remain firm and valid for 90 days from the date of opening. The obligations of Brevard County under this award are subject to the availability of funds lawfully appropriated for its purpose by the State of Florida and/or the Brevard County Board of County Commissioners.

ADDITIONAL TERMS & CONDITIONS: The County reserves the right to reject bids containing any additional terms or conditions not specifically requested in the original conditions and specifications.

TAXES: The County is exempt from Federal excise taxes and all sales taxes.

DISCOUNTS: All discounts, EXCEPT THOSE FOR PROMPT PAYMENT, shall be considered in determining the lowest net cost for bid evaluation purposes.

MEETS SPECIFICATIONS: All equipment and accessories furnished under these specifications shall be new, the latest model in current production, and shall be of good quality, workmanship, and material. The Contractor represents that all equipment offered under these specifications shall meet or exceed the minimum requirements specified. Delivery specifications shall be strictly adhered to. The Contractor shall be responsible for performing the work necessary to meet County standards in a safe, neat, good, and workmanlike manner.

BRAND NAME OR EQUAL: If items called for by this invitation have been identified in the specifications by a "Brand Name or Equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be acceptable. Bids offering "equal" products will be considered for award if such products are clearly identified in the bid and are determined by the County to meet fully the salient characteristics requirements listed in the specifications. Unless the clearly indicates in his bid that he is offering an "equal" product, the bid shall be considered as offering the same brand name product referenced in the specifications. If the proposes to furnish an "equal" product, the brand name if any, or the product to be furnished shall be inserted in the space provided or such product shall be otherwise clearly identified. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the County and will be based on information furnished by the Contractor. Purchasing Services is not responsible for locating or securing any information, which is not identified in the bid and reasonably available to Purchasing Services. To ensure that sufficient information is available, the Contractor shall furnish as a part of the bid, or prior to bid opening, as indicated, all descriptive material necessary for Purchasing Services to determine whether the product offered meets the salient characteristics required by the specifications and establish exactly what the Contractor proposes to furnish and what the County would be binding itself to purchase by making an award.

SILENCE OF SPECIFICATIONS: The apparent silence of the specifications and any supplemental specifications as to any details or the omission from same of any detailed description concerning any point, shall be regarded as meaning that only the best

commercial practices are to prevail and only materials of first quality be provided. All interpretations of this specification shall be made upon the basis of this statement.

ASSIGNMENT: Any purchase order (PO) issued pursuant to this bid and the moneys, which may become due hereunder is not assignable except with the prior written approval of the Purchasing Manager.

INDEMNIFICATION: The successful Contractor, without exception shall indemnify and save harmless the County and its employees from liability of any nature of kind including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the County. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or cost arising from the use of such design, device, or materials in any involved in the work.

TRAINING: If specified, Contractors may be required at the convenience of the County, to provide employees training in the operation and maintenance of any items(s) purchased from this bid.

ACCEPTANCE: Items may be tested for compliance with specification. Items delivered not conforming to specifications may be rejected and returned at Contractor's expense. Those items not delivered as per delivery date in bid and/or purchase order may be purchased on the open market. Any increase in cost may be charged against the Contractor. Any violations of these stipulations may also result in the Contractor name being removed from the bid list and the Contractor disqualified from doing business with the County.

SAFETY WARRANTY: The selling dealer, distributor, supplier, and manufacturer shall be responsible for having complied with all Federal, State and local standards, regulations, and laws concerning the equipment specified and the use thereof, applicable and effective on the date of manufacture including safety and environmental standards as apply to both private industry and governmental agencies.

WARRANTY: The Contractor agrees that, unless otherwise specified, the services furnished under this bid shall be covered by the most favorable commercial warranty the Contractor gives to any customer for comparable quantities of such supplies and/or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the County by any other provision of this bid.

AWARDS: As the best interest of the County may require, the right is reserved to make award(s) by individual items, group of items, all or none, or a combination thereof; to reject any and all bids or waive any minor irregularity or technicality in bids received. Contractors are cautioned to make no assumptions unless their bid has been evaluated as being responsive and qualified. All awards made as a result of this bid shall conform to applicable ordinances of the County. The Board may return, for full credit, any unused items received which fail to meet the Board's performance standards. The County reserves the right to cancel an awarded bid upon due cause—i.e., Contractor misrepresentation, Contractor negligence, non-performance, etc. via written notice.

Unless otherwise noted in the bid document, Contractors shall submit one bid only.

CONFLICT OF INTEREST: The award hereunder is subject to provisions of State of Florida Statutes and Brevard County Ordinances. All Contractors must disclose with their bid the name of any officer, director, or agent who is also an employee of Brevard County. Further, all Contractors must disclose the name of any County employee who owns, directly or indirectly, any interest in the proposer's firm or any of its branches.

PURCHASING AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES: The County permits the awarded Contractor(s) to extend the pricing, terms and conditions of this solicitation to other governmental entities at the Contractor's discretion. Each governmental entity that utilizes this solicitation or resulting contract will be responsible for execution of its own requirements with the awarded Contractor(s).

DRUG-FREE WORKPLACE: Whenever two or more bids, which are equal with respect to price, quality, and service, are received by The County for the procurement of commodities or contractual services, a bid received from a business that has implemented a drug-free workplace program per 287.087, Fla. Stat. shall be given preference in the award process.

LOBBYING STATEMENT: All Contractors are hereby placed on notice the County Commission and staff shall not be contacted about this Bid. Public meetings and public deliberations of the Selection Committee are the only acceptable forum for the discussion of merits of services requested by the Invitation to Bid; and written correspondence concerning Bids may be submitted to the County Manager. Each Bid will have one non-voting staff member designated who will serve as the liaison. Failure to adhere to these requirements could result in Board action to disqualify the Contractor from consideration of award.

PUBLIC ENTITY CRIMES: All Contractors are hereby placed on notice that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in 287.017 Fla. Stat. for CATEGORY TWO (currently \$35,000) for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

DISCRIMINATORY VENDOR LIST: An entity or affiliate placed on the Discriminatory Vendor List shall not submit a Bid for a contract to provide goods or services to a public entity, shall not submit a Bid on a contract with a public entity for the construction or repair of a public building or perform any public work, shall not submit Bids for leases of real property to a public entity, shall not award or perform work as a contractor, supplier, subcontractor, or consultant under any contract with any public entity, and shall not transact business with any public entity per 287.134(3)(d), Fla. Stat.

SCRUTINIZED COMPANIES:

- Awarded Contractor shall certify that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S. If the Agreement is for more than \$1,000,000 the Contractor further certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S.
- For Contracts of any amount, if the County determines the Contractor submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the County shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the County's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or on a case-by-case basis the County may choose to maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met. For Contracts \$1,000,000 and greater, if the County determines the Contractor submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies with Activities in the Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the County shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the County's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or on a case-by-case basis the County may choose to maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met.
- The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.
- As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, this section shall become inoperative and unenforceable.

LICENSES, CERTIFICATIONS, AND PERMITS: The successful Contractor will be required to secure, at its expense and show proof of the proper business tax receipt and/or any other license/certification required of the applicable service/work being performed. Prior to award, the apparent low Contractor will be required to provide proof of license and/or certification within two (2) business days of the posted awarded recommendation and submit copies of license/certifications to the Purchasing Office. The Brevard County Contractor Licensing Regulation & Enforcement (LR&E) office is responsible for the county licensing of trades: General Building, drywall, plumbing, electric, HVAC, roofing, etc. If you have questions concerning the licensing requirements for a Brevard County contractor's license, please Contact the Brevard County LR&E office at (321) 633-2058, option 0, for any questions.

The awarded Contractor shall fully comply with all federal and state laws, county and municipal ordinances and regulations in any manner affecting the performance of the work. The successful Contractor is responsible for obtaining all permits necessary to construct the project. Brevard County does not exempt itself from permitting requirements. The Owner shall pay all Brevard County permit, inspection and impact fees required for the project or services required under this

contract; all other fees for permits required by agencies/municipalities other than Brevard County shall be the responsibility of the awarded Contractor. A copy of issued permit shall be provided to the User Department of the County for their records.

ERRORS: In the event of extension error(s), the unit price will prevail. In the event of addition error(s), the extended totals will prevail. In either case, the Contractor's total offer will be adjusted accordingly.

CANCELLATION AND REINSURANCE: If any insurance should be canceled or changed by the insurance expiring during the period of this bid award, the Contractor shall be responsible for securing other acceptable insurance to provide the coverage specified in the bid to maintain continuous coverage during the life of the award.

INCURRED COST: Brevard County is not liable for any cost incurred by any Contractor prior to an award. Costs for developing a response to this request for bid are entirely the obligation of the Contractor and shall not be chargeable in any manner to Brevard County.

MATERIALS/SUPPLIES: No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller.

SUBCONTRACTORS: The Contractor shall be fully responsible for all acts and omissions of his subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts and omissions of persons directly employed by him.

VERBAL INSTRUCTIONS: No negotiations, decisions, or actions shall be initiated or executed by the Contractor as a result of any discussions with any County employee. Only those communications, which are in writing from an authorized County representative, may be considered. Only written communications from Contractors, which are assigned by a person designated as authorized to bind the company, will be recognized by the County as duly authorized expressions on behalf of the company.

LITIGATION VENUE: All litigation shall take place either in the State Courts of Florida, wherein venue shall lie in Brevard County, Florida, or in the Federal Courts wherein venue shall lie in the Middle District in and for the State of Florida. The Contractor expressly waives venue in any other location.

ADDITION, DELETION, OR MODIFICATION OF SERVICES: The County reserves the right at its sole discretion to increase, decrease, or delete any portion of this agreement/contract at any time without cause, and if such right is exercised by the County, the total fee shall be reduced by a prorate basis. If work has already been accomplished on the portion of the contract to be increased, decreased, or deleted, the Contractor shall be paid for the correct portion on the basis of the estimated percentage agreed upon by the County, the contractor, and the contract manager upon completion of such portion.

OPERATION DURING DISPUTE: In the event the County has not canceled the contract in accordance with the terms of the contract, and there remains a dispute between the Contractor and the County, the Contractor agrees to continue to operate and perform under the terms of the contract while such dispute is pending. Further, the Contractor agrees that, in the event a suit is

filed for injunction or other relief, it will continue to operate the system until the final adjudication of such suit by the court.

CONTRACT TERMINATION: The contract resulting from this bid shall commence upon issuance and acceptance of the fully executed contract. The County user agency shall issue orders against the contract on an as needed basis. The contract may be canceled by the Contractor, for good cause, upon ninety (90) days prior written notice. The County retains the right to terminate the contract, in part or in its entirety, with or without good cause, upon thirty (30) days prior written notice or as stated herein. In the event of termination by either party as provided herein, the awarded Contractor shall be paid for services performed through the date of termination.

SPECIAL ACCOMMODATIONS: In accordance with the Americans with Disabilities Act (ADA) and Section 286.26, Fla. Stat., persons with disabilities needing special accommodations to participate should contact the ADA Coordinator at (321) 633-2017 or by email at Brian.Breslin@BrevardFL.gov, and must be made no later than 48 hours prior the public meeting/hearing in order to provide the requested service.

RESPONSIBILITIES: Contractors, by submitting a bid, certify that it understands all planning, coordinating, and implementation of the described services shall be done through personal contact between the and the contract manager, and that telephone contact and mail correspondence may, in some cases, not be appropriate. County approved representatives of the shall be available to meet with the contract manager, as may be required, to accomplish the County's objectives as effectively and efficiently as possible, during all phases of this agreement/contract/bid.

SUPERVISION OF CONTRACT PERFORMANCE: The Contractor shall be notified of lack of performance in writing by the contract manager. If at any time during the term of the contract, performance satisfactory to the contract manager shall not have been made, the Contractor, upon written notification by the contract manager, shall within three (3) days increase the force, tools and equipment as needed to properly perform the contract. The failure of the contract manager to file such notification shall not relieve the Contractor of the obligation to perform the work at the time and in the manner specified by the contract. If the Contractor does not increase the force or neglects to do the work properly, the contract manager can withhold a percentage of payment or withhold the entire dollar amount due as per the contract.

MISUNDERSTANDING: To prevent misunderstanding and any litigation, the contract manager shall decide any and all questions, which may arise concerning the quality and acceptability of the work, and services performed the sufficiency of performance, the interpretation of the provisions of the contract, and the acceptable fulfillment of the contract on the part of the. The Contract Manager will determine whether or not the amount, quantity, character and quality of the work performed are satisfactory, which determination shall be final, conclusive and binding upon both the Contractor and the County. The contract manager shall make such explanation as may be necessary to complete, explain, or make definite the provisions of the contract, and his findings and conclusions shall be final and binding upon both parties.

GREEN PROCUREMENT POLICY: The Board of County Commissioners approved a "green procurement" policy in March 2004 to establish procurement requirements that promote the purchase and use of Environmentally Preferred Products as defined by the United States

Environmental Protection Agency. Environmentally Preferred Products (EPP) are those products and services that have a reduced effect on the human health and the environment when compared to other products and services that serve the same purpose. EPP products encourage (1) waste reduction; (2) reduced exposure to hazardous materials; (3) natural resource conservation; and (4) energy efficiency.

MONITORING OF WORK: The shall provide the contract manager with every reasonable opportunity to ascertain whether or not the work, as performed, is in accordance with the requirements of the contract. The Contractor shall designate, in writing, a person to serve as liaison between the Contractor and the County.

PROMPT PAYMENT: For payment promptness, Brevard County shall remit payment in accordance with the Florida Prompt Payment Act, Section 218.70, Fla. Stat., et seq. Brevard County does not expect to be billed in excess of the ordered quantity and will not pay for any quantity above the ordered quantity. Any order placed as a result of this bid will be subject to Billing Instructions and Conditions on the back of the Brevard County Purchase Order form. Contractors may offer cash discounts for prompt payment but they will not be considered in determination of award. If a Contractor offers a discount, it is understood that the discount time will be from the date of satisfactory delivery, at the place of acceptance, and receipt of correct invoice, at the office specified, whichever occurs last. Requests for final payment for any work or services for which a permit is required shall include a copy of all required permits and copies of all required inspection reports. Failure to provide proof of acquisition of all required permits and successful completion of all required inspections shall represent an incomplete invoice and will delay payment.

RIGHT TO AUDIT RECORDS: In performance of this Agreement, the Contractor shall keep books, records, and accounts of all activities related to the Agreement, in compliance with generally accepted accounting procedures. All documents, papers, books, records, and accounts made or received by the contractor in conjunction with the Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the office, and shall be retained by the contractor for a period of five (5) years after termination of this Agreement—unless such records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), Fla. Stat.

UNAUTHORIZED ALIEN WORKERS: Brevard County will not accept bids from Contractors who knowingly employ unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S. Code § 1324a(e) (Section 274A(e) of the Immigration and Nationality Act “INA”). The County shall consider a Contractor’s intentional employment of unauthorized aliens as grounds for immediate termination of any awarded Bid. The Contractor shall utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. **Contractor is required to submit a copy of the fully executed E-Verify Memorandum of Understanding with bid.**

FLORIDA PUBLIC RECORDS LAW: Both parties understand that the County is subject to the Florida Public Records Law, Chapter 119, Fla. Stat. and all other applicable Florida Statutes. If the materials provided by the Contractor do not fall under a specific exemption, under Florida or federal law, materials provided by the Contractor to the County would have to be provided to anyone making a public records request. It will be the Contractor's duty to identify the information, which it deems is exempt under Florida/federal law, and identify the statute by number, which exempts that information.

Should any person or entity make a public request of the County—which requires or would require the County to allow inspection or provide copies of records which the Contractor maintains are exempt from Public Records Law or are confidential—it shall be the Contractor's obligation to provide the County within 24 hours (not including weekends and legal holidays), of notification by the County to the Contractor of the request, of the specific exemption or confidentiality provision so the County will be able to comply with the requirements of Chapter 119, Fla. Stat.

Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the Contractor to the County which the Contractor maintains are exempt or confidential from such inspection/production as a public record, then the Contractor shall hire and compensate attorney(s) who shall represent the interest of the County as well as the Contractor in defending such action. The Contractor shall also pay any costs to defend such action and shall pay any costs and attorney fees, which may be awarded pursuant to 119.12, Fla. Stat.

All material submitted becomes the property of the County and may be returned only at the County's option. The County has the right to use any or all ideas presented in any reply to this ITB. Selection or rejection of any bid does not affect this right.

PREFERENCE GIVEN TO COMMODITIES MANUFACTURED, GROWN, OR PRODUCED IN FLORIDA: In accordance with 287.082, Fla. Stat., whenever two or more competitive sealed bids are received, one or more of which relates to commodities manufactured, grown, or produced within this State, and whenever all things stated in such received bids are equal with respect to price, quality, and service, the commodities manufactured, grown, or produced within this State shall be given preference.

COUNTY SEAL: Use of the County Seal without the express approval of the Board of County Commissioners is a violation of 165.043, Fla. Stat. punishable as a misdemeanor.

TIE BIDS: Award of all tie bids shall be made by the Purchasing Manager in accordance with State Statutes, which allows a Contractor certified as a Drug-Free Workplace to have precedence. When evaluation of Contractor responses to solicitations results in identical offers, with regards to bids, from two or more Contractors, the County shall determine the order of award using the following criteria in order of preference listed below (from highest priority to lowest priority):

- For tie bids, quotations or proposals, priority shall be given to the Contractor certifying that he/she is a Drug-Free Workplace as defined within 287.087, Fla. Stat.;

- In the event that a tie still exists after progressing through a, the decision shall be made by lot or coin toss. The drawing of lots or coin toss shall be conducted in the presence of the effected Contractors if they elect to be present.

CONTRACTOR COMPLAINTS AND DISPUTES: The County encourages prompt and fair handling of all complaints and disputes with the business community. In order to resolve disputed matters in an equitable manner, the following procedures are adopted:

POSTING OF AWARD NOTICES

- **FORMAL SEALED BIDS:** No later than three (3) business days after a bid opening the Purchasing Manager or his/her designee shall post a tabulation of competitive sealed bids to the www.demandstar.com and [VendorLink](#) website. The apparent contractor will be the intended award recommendation. If after posting the tabulation, the apparent low contractor is found to be non-responsive to the specifications, a revised tabulation will be posted, indicating that the low contractor is non-responsive, and that the next lowest contractor is the intended awardee. The time for filing a protest will begin the date of the later posting.
- **FORMAL SEALED PROPOSALS:** No later than three (3) business days after the selection committee recommendations are finalized, the Purchasing Manager or designee shall post the selection committee's rankings and recommended award for bids.

PROCEEDINGS

- Any contractor who is allegedly aggrieved in connection with the solicitation or pending award of a contract must file a formal written protest with the Purchasing Manager within five (5) business days of the posted award recommendation.
- The formal written protest shall reference the bid number, and shall state with particularity the facts and laws upon which the protest is based, including full details of adverse effects and the relief sought.
- Within seven (7) calendar days of receipt of the formal written protest, the Purchasing Manager will arrange a meeting of the Protest Committee and the affected parties. The Protest Committee shall consist of two (2) Department Directors or designees, both of whom must be from an organizational group which the user department or group is not assigned; one (1) Assistant County Manager, who must be from an organizational group which the user department or group is not assigned under. The Purchasing Manager shall act as a non-voting Hearing Coordinator and the County Attorney or designee may be requested to attend as a non-voting member. The Purchasing Manager or designee record the meeting and provide any information as the committee may request. The purpose of the meeting of the Protest Committee is to provide an opportunity to: (1) review the basis of the protest, (2) evaluate the facts and merits of the bid protest, and (3) if possible, to reach a resolution of the protest that is acceptable to the affected parties. For the purpose of the Protest Committee hearing, resolution shall mean that the Protestor finds the decision of the Protest Committee acceptable.

- In the event the matter is not resolved with the Protestor's acceptance of the Protest Committee's decision, the Purchasing Manager will schedule the recommended award including the details of the protest and the Protest Committee's recommendation before the Board of County Commissioners via Board Agenda. The County Manager, prior to approval and placement on the Board agenda, may elect to resolve the matter before presentation to the Board. In the event that the County Manager cannot bring the matter to resolution, a copy of the Agenda Report shall be furnished immediately to all affected parties. The affected parties may appear before the Board of County Commissioners as a final means of administrative remedy.

STAY OF PROCUREMENTS DURING PROTESTS

- Failure to observe any or all of the above procedures shall constitute a waiver the right to protest a contract award. In the event of a timely protest under the procedure, the County shall not proceed further with solicitation or with the award until a recommendation is made by the Committee, or a written determination is made by the County Manager that the award must be made immediately in order to protect the public interest. Invoice disputes between an awarded Contractor and user agency will follow the guidelines set forth in AO-33, *Prompt Payment of Invoices*.

OBLIGATION OF CONTRACTOR TO INFORM HIMSELF AS TO ALL CONDITIONS RELATING TO PROJECT

- It is the responsibility of each Contractor, prior to submitting a bid to: (1) examine thoroughly all available Contract Documents and other related data identified in the Bidding Documents, including "technical data" referred to below; (2) visit the site to become familiar with and satisfied with the general, local and site conditions that may affect cost, progress, performance or furnishing of the work; (3) consider federal, state and local laws and regulations that may affect cost, progress, performance or furnishing of the work; (4) study and carefully correlate the Contractor's knowledge and observations with the Contract Documents and such other related data; (5) promptly notify the Owner's Engineer of all conflicts, errors, ambiguities or discrepancies which the Contractor has discovered in or between the Contract Documents and such other related documents; and (6) be responsible for obtaining such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the work, or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by the Contractor and safety precautions and programs incident thereto or which Contractor deems necessary to determine its bid for performing and furnishing the work in accordance with the time, price and other terms and conditions of the Contract Documents.

- Limited "technical data," is provided in the bid documents. The Contractor is responsible for any additional data, interpretations, opinions or information required for bidding or otherwise relating to the subsurface conditions at the site, and is solely responsible for assuring the completeness of the information necessary for the purposes of bidding or construction.
- For this specific project, the Owner hereby provides access to the County's right-of-way or utility and drainage easements for the purposes of visual observations and non-intrusive measurements. Entrance to any other property will need to be coordinated with the County.
- The submission of a bid will constitute an incontrovertible representation by the Contractor that the Contractor has complied with every requirement of this Article 2, that, without exception, the bid is premised upon performing and furnishing the work required by the Contract Documents, and applying the specific means, methods, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that the Contractor has given the Owner's Engineer written notice of all conflicts, errors, ambiguities and discrepancies that the Contractor has discovered in the Contract Documents and the written resolutions thereof by the Owner's Engineer are acceptable to the Contractor, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the work.

EXAMINATION OF CONTRACT DOCUMENTS

- The Contractor shall carefully examine the Drawings and Specifications and other Contract Documents, and become thoroughly informed about any and all conditions and requirements, including the construction schedule, that may in any manner affect the work to be performed under the Contract. In case of discrepancy the governing order of the documents shall be as described in Section VIII, Paragraph 2.2. Ignorance on the part of the Contractor will in no way relieve the Contractor of the obligations and responsibilities assumed under the Contract.

DISCREPANCIES

- Should a Contractor find discrepancies, ambiguities in, or omissions from, the Drawings or Specifications, or should the Contractor be in doubt as to their meaning, the Contractor shall at once notify the Owner. If necessary the Owner will address discrepancies brought to its attention in the form of an Addendum issued no later than five days prior to Bid opening day.

ADDENDA, MODIFICATIONS OR INTERPRETATIONS DURING BIDDING

- No interpretation of the meaning of the specifications, or other contract documents will be made orally to any Contractor. Every request for such interpretation must be in writing, addressed to Purchasing Services at 2725 Judge Fran Jamieson Way, Bldg. C, 3rd Floor, Suite 303 Viera, FL 32940, or emailed to the attention of the applicable Procurement Analyst. To be given consideration, such requests must be received at least five (5) business days prior to the date fixed for the opening of the bid. Any and all such interpretation and supplemental instructions will be in the form of a written addendum. Failure of any Contractor to receive any such addendum or interpretation shall not relieve said Contractor from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents, whether or not the successful Contractor received a copy of such addendum, it being understood that all Contractors are responsible to verify that they have received any such addenda prior to submitting their bid.

FAMILIARITY WITH LAWS

- The Contractor is required to be familiar with and should be responsible for complying with all federal, state and local laws, ordinances, rules and regulations that in any manner affect the work. The Contractor shall be liable to the Owner for any loss of agency funding or damages caused by the failure of the Contractor to adhere to such laws, ordinances, rules or regulations or conditions.

PREPARATION AND SUBMISSION OF BIDS

- Pre-qualification of Contractors: The successful Contractor shall be subject to a pre-qualification process to be undertaken by Brevard County in accordance with Brevard County Policy BCC-28 and in Section II, Article 25.
- Signature of the Contractor: The Contractor must sign the Proposal forms in the space provided for the signature. If the Contractor is an individual, the words "doing business as ____", or "Sole Owner" must appear beneath such signature. In the case of a partnership, the signature of at least one of the partners must follow the firm name and the words "Member of the Firm" should be written beneath such signature. If the Contractor is a corporation, the title of the officer signing the Proposal on behalf of the corporation must be stated and evidence of authority to sign the Proposal must be submitted. The Contractor shall state in the Proposal the name and address of each person interested therein.
- Basis for Bidding: The price bid for each item shall be on a lump sum or unit price basis according to the form of the Proposal. The bid prices shall remain unchanged for the duration of the Contract and no claims for cost escalation during the progress of the work will be considered.
- Price Bid: The total price bid for the work shall be the sum of the lump sum prices bid. The individual unit prices in the Bid Schedule need not be multiplied

by the appropriate quantities estimated by the Contractor to obtain the Lump Sum amount. Prices shall be stated in figures in the appropriate place on the Bid Schedule. Lump Sum prices bid for each item will be expressed in both words and figures, and in the case of discrepancy between the two, the amount in words shall govern. In the event that there is a discrepancy on the Bid Schedule due to unit price extension or additions, the corrected extensions and additions shall be used to determine the project bid amount along with the amount in words for the lump sum items.

- Contractor Submission of Bids:
 - Each bid must be submitted on the Proposal Form as furnished, together with a suitable bid security, herein described. The bid **MUST** be submitted as an original plus one (1) electronic copy on compact disc (CD) or USB flash drive.
 - The above proposal and bid security must be submitted in a sealed envelope which shall be marked so as to clearly indicate its contents and the name of the Contractor. If forwarded by mail address to the Purchasing Department, Government Center, 2725 Judge Fran Jamieson Way, Building C, Third Floor, Suite 303, Viera, FL 32940, by special delivery, registered mail. Proposals will be received until the date and hour stated in the Advertisement for Bids, unless changed by written addendum.
 - The apparent low Contractor must submit with the pre-qualification documents a list of the Contractor's major subcontractors together with the services they will supply and the value of their work on the form provided in Section IV. These subcontractors will be subject to review as to their competency by the Owner prior to award of Contract and shall be one of the considerations in determining the lowest qualified and responsive Contractor as defined hereinafter. After award of Contract, no change in subcontractors shall be made unless approved by the Owner after a request for such a change has been submitted in writing by the Contractor which shall include the reasons for such request.
 - The Contractor must also submit with the bid the Minority Employment Information form provided in this document for his firm.
 - The apparent low Bidder must also submit names for the superintendent in charge of day to day field operations for the project, along the required personnel training certificates listed on the Prequalification Documents Checklist.
 - The County Commission supports diversity in all contracting opportunities. A list of certified small and minority owned firms may be

obtained by contacting the State of Florida Office of Supplier Diversity at (850)487-0915.

- Bid must contain a manual signature of authorized representative in the space(s) provided. Bids must be typed or printed in ink. Use of erasable ink is not permitted. All corrections made by Contractor to any bid entry must be initialed. The company name and Federal Employer Identification Number (FEID) number shall appear in the space(s) provided.

DISQUALIFICATION OF CONTRACTORS

- One Bid: Only one Bid from an individual firm, partnership or corporation under the same or under different names will be considered. If it is believed that a Contractor is interested in more than one proposal for the work involved, all Proposals in which such a Contractor is interested will be rejected.
- Collusion Among Contractors: If there is evidence that collusion exists among the Contractors, the Proposals of all participants in such collusion will be rejected, and no participants in such collusion will be considered in future Proposals for the same work.

BID SECURITY

- Each bid must be accompanied by a cashier's check or Bid Bond utilizing the form provided in the Contract Documents, in an amount not less than five percent (5%) of the amount of the bid. **DO NOT MODIFY OR RE-ISSUE THIS FORM. USE THE FORM PROVIDED IN THE SPECIFICATIONS ONLY. FAILURE TO USE THE FORM PROVIDED IN THE SPECIFICATION WILL RESULT IN DISQUALIFICATION OF THE CONTRACTOR.** A cashier's check shall have the necessary State of Florida's Documentary Stamps attached. Cash and Cashier's Checks will be returned within ten (10) days after the Owner and the accepted Contractor have executed the written Contract and the accepted Contractor has filed acceptable Performance and Payment Bond, or letter of credit, and an acceptable Certificate of Insurance. Bid Bonds will only be returned upon request and retained as part of the official file. If ninety (90) days have passed after the date of the formal opening of the bids and no Contract has been awarded, the bid security of any Contractor will be returned on written request of Contractor, provided that the Contractor has not been notified of the acceptance of the bid.

POWER OF ATTORNEY

- Attorneys-in-Fact, who sign Bid Bonds or Contract Bonds, must file with such bonds a certified copy of their Power of Attorney to sign said Bonds.

BID SECURITY FORFEITED

- Failure to execute a Contract and provide acceptable documents as provided herein within ten (10) days after a written Notice of Award has been given shall be just cause for the annulment of the award and the forfeiture of the Bid Security to the Owner. Award will then be made to the next lowest qualified and responsive Contractor, or all bids may be rejected, or the Owner may take such other action as it deems appropriate.

WITHDRAWAL OF BID

- Bids may be withdrawn prior to the time scheduled in the Advertisement for Bids for the bid opening. After bid opening, a bid may not be withdrawn for a period of ninety (90) days, and afterwards a bid may be withdrawn only if the Contractor has not been notified that the bid has been accepted.

MODIFICATION OF BIDS

- Written bid modification will be accepted from Contractors if addressed to the Purchasing Department, Government Center, 2725 Judge Fran Jamieson Way, Building C, Third Floor, Viera, FL 32940, and received prior to opening of formal bids.

CONSIDERATION OF BIDS

- For the purpose of award, after the bids are opened and read, the correct summation of the lump sum prices will be considered the bid. The results of such comparison made available to the public. Until the final award of the Contract, the right will be reserved to reject any and all bids and to waive technical errors and irregularities as may be deemed best for the interest of the Owner.

RIGHT TO ACCEPT OR REJECT BIDS

- Bids which contain modifications that are incomplete, unbalanced, conditional, obscure, or which contain additions not requested or irregularities of any kind, or which do not comply in every respect with the Instructions to Contractors and the Contract Documents, may be rejected at the option of the Owner. The Owner is not bound to accept the minimum bid stated herein, but reserves the right to accept any bid which, in the judgment of the Owner, will best serve the needs and interest of the Owner.

AWARD OF CONTRACT

- The Owner reserves the right to reject any or all bids, or any part of any bid, to waive any informality in any bid, or to re-advertise for all or part of the work contemplated. The Owner reserves the right, prior to award of Contract, to delete from the scope of the project any item or any combination of items, the aggregate bid prices for which do not exceed twenty-five (25) percent of the total bid price for the project.
- If a Contractor to whom a Contract is awarded forfeits the bid security and the award of the Contract is annulled, the Owner may then award the Contract to the next lowest qualified and responsive Contractor, or all bids may be rejected, or the work may be re-advertised, as the Owner decides.
- The Contract will be awarded to a lowest qualified, responsive Contractor, for the alternates and options selected by the County, complying with the applicable conditions of the Contract Documents, except as noted in Paragraph 16.1 of this Section.
- The Owner also reserves the right to reject the Proposal of a Contractor who has previously failed to perform properly or to complete Contracts of a similar nature on time.
- Brevard County encourages prompt and fair handling of all complaints and disputes with the business community. In order to resolve disputed matters in an equitable manner, the following procedures are adopted:
 - Posting of Award Notices
 - **FORMAL SEALED BIDS/QUOTES:** No later than three (3) business days after a bid opening the Purchasing Manager or his designee shall post a tabulation of competitive sealed bids. The apparent low bid will be the intended award recommendation. Bid tabulations are posted to DemandStar at www.demandstar.com and VendorLink at www.myvendorlink.com. If after posting the tabulation, the apparent low bid is found to be responsive to the specifications, the formal award evaluation will be posted. The time for filing a protest will begin the date of the later posting.
 - Proceedings
 - Any Contractor, who is allegedly aggrieved in connection with the solicitation or pending award of a contract, must file a formal written protest with the Purchasing Manager within five (5) business days of the posted award recommendation.

- The formal written protest shall reference the proposal number, and shall state with particularity the facts and laws upon which the protest is based, including full details of adverse effects and the relief sought.
- Within seven (7) calendar days of receipt of the formal written protest the Purchasing Manager will arrange a meeting with the protest Committee and the affected parties. The Protest Committee shall consist of two (2) Department Directors or designees, both of whom must be from an organizational group which the user agency is not assigned; one (1) Assistant County Manager, who must be from an organizational group which the user department or group is not assigned. The Purchasing Manager shall act as the Hearing Coordinator and the County Attorney or designee shall be requested to attend. The Purchasing Manager or designee will record the meeting and provide any information as the committee may request. The purpose of the meeting of the protest Committee is to provide an opportunity to: (1) review the basis of the protest, (2) evaluate the facts and merits of the bid protest, and (3) if possible, to reach a resolution of the protest that is acceptable to the affected parties. For the purpose of the Protest Committee hearing, resolution shall mean that the Protestor finds the decision of the Protest Committee acceptable.
- In the event the matter is not resolved with the Protestor's acceptance of the Protest Committee's decision, the Purchasing Manager will schedule the recommended award including the details of the protest and the Protest Committee's recommendation before the Board of County Commissioners via County Commission Agenda. The County Manager, prior to approval and placement on the County Commission agenda, may elect to resolve the matter before presentation to the County Commission. In the event that the County Manager cannot bring the matter to resolution, a copy of the Agenda Report shall be furnished immediately to all affected parties. The affected parties may appear before the Board of County Commissioners as a final means of administrative remedy.
- Stay of Procurements during Protests
 - Failure to observe any or all of the above procedures shall constitute a waiver of the right to protest a contract award. In the event of a timely protest under the procedure, the County shall not proceed further with solicitation or with the award until a recommendation is made by the Committee, or a written determination is made by the County Manager that the award must

be made without delay in order to protect the public interest. Invoice disputes between an awarded Contractor and user agency will follow the guidelines set forth in AO-33, Prompt Payment of Invoices.

EXECUTION OF CONTRACT

- A Contractor to whom a Contract is awarded will be required to execute the prescribed Contract, in five (5) counterparts, and Performance and Payment Bond or letter of Credit within ten (10) days from the date of Notice of Award and deliver the executed Contract to the Owner.

PUBLIC CONSTRUCTION PERFORMANCE AND PAYMENT BONDS

- Simultaneously with the Contractor's delivery of the executed Contract to the Owner, a Contractor to whom a Contract has been awarded in an amount of \$100,000 or more, shall supply the Owner an executed Public Construction Performance Bond and a Public Construction Payment Bond or other substitute surety Authorized by the Board. Public Construction Performance Bond and Public Construction Payment Bond shall be submitted on the forms provided in the Contract Documents, each in an amount of one-hundred percent (100%) of the total amount of the accepted contract price, as security for the faithful performance of the Contract and for the payment of all persons performing labor or furnishing materials in connection therewith. The bond shall be substantially in the form provided in Subsection 255.05(3) or as otherwise approved by Owner, and shall include Owner as Principal. The Public Construction Performance and the Public Construction Payment Bond shall have as the surety thereon only such surety company or companies as are authorized to write bonds of such character and amount under the laws of the State of Florida. The Attorney-in-Fact, or other officer who signs said bonds for a surety company, must file with the bond a certified copy of the Power-of-Attorney authorizing the signatory to do so.
- Within five days of execution of the project contract, by both parties, the Contractor shall provide to the Owner a copy of the Public Construction Performance Bond and the Public Construction Payment Bond that has been officially recorded in the office of the Clerk of the Circuit and County Court, and shall provide a copy of same to each and every subcontractor and supplier approved for the project, and notify them of deadlines to make claims under said bonds.
- The Public Construction Performance Bond shall remain in force from the date of the notice to proceed until twelve (12) months after the date of final acceptance of the work.

- The Public Construction Payment Bond and the Public Construction Performance Bond, or any other surety shall be increased every time the Contractor is awarded a Change Order or Change Directive that increases the original contract price.
- The Public Construction Performance Bond shall also indemnify the Owner, and any successor to the Owner, against losses resulting from latent defects in materials or improper performance of work under the Contract which may appear or be discovered after completion of the work. The Contractor shall indemnify the Owner against all losses, damages, expenses and attorney fees, including appellate proceedings that the Owner sustains because of the default by the principal under the Contract.
- The Board reserves the right at any time to require a surety payment and performance bond to be posted if it determines that any exemption of bond surety provided for herein is or becomes inadequate or insufficient, or if the Contractor fails to comply with its obligations to suppliers, materialmen, subcontractors or the Board.
- For projects less than \$100,000, a Public Construction Performance Bond and the Public Construction Payment Bond shall not be required however, the following provisions shall apply:
 - A document notifying all subcontractors and suppliers that the Contractor has not executed said bonds shall be posted in a conspicuous place at the construction site or location where materials or supplies are to be delivered.

All provisions under Section VII, Article 33 - Partial and Final Payments as identified in the Specifications and Contract Documents shall be adhered to regardless of whether the bonds are required or not.

QUALIFICATION OF SURETIES

- General: The following requirements shall be met by all surety companies furnishing bonds required by this document.
- Qualifications: As to companies being rated acceptable:
 - The Surety shall be rated as "A" or better as to General Policyholders Rating and Class X or better as to Financial Category by Best's Key Rating Guide, published by Alfred M. Best Company, Inc., of 75 Fulton Street, New York, New York, 10038.
 - The Surety shall be listed on the U.S. Department of the Treasury, Fiscal Service, Bureau of Government Financial Operations, Circular 570,

(Latest Revision) entitled, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies".

- All Surety Companies are subject to approval and may be rejected by the Owner without cause, in the same manner that bids may be rejected.
- Limitations: Bonding Limits or Bonding Capacity refer to the limit or amount of Bond acceptable on any one risk.
 - The bonding limit of the Surety shall not exceed ten percent (10%) of the policyholder surplus (capital and surplus) as listed by the aforementioned Best's Key Rating Guide, on any one risk (penalty or amount of any one bond).
- Requirements:
 - Policyholder's surplus is required to be 10 times the amount of any one bond.

INTERPRETATION OF ESTIMATED QUANTITIES

- In the case of unit price items, the quantities of work to be done and materials to be furnished under this Contract, given in the Bid Pricing Form, are to be considered as approximate only and not guaranteed, and are to be used solely for the comparison of Bids received. For each unit of work contained in the Bid Pricing Form, the Owner reserves the right to require greater or fewer units of work to be performed than the quantities listed and to revise the scope by adding or deleting items. The Owner and the Owner's Engineer does not expressly or by implication represent that the actual quantities involved will correspond exactly therewith; nor shall the Contractor plead misunderstanding or deception because of the character, location or other conditions pertaining to the work. Payment to the Contractor will be made only for the actual work performed in accordance with the Drawings and other Contract Documents.

SUBSTITUTIONS AND EQUIVALENTS

- When certain items of equipment, devices and/or materials are specified and/or described as the product of a particular manufacturer together with any required additional information such as model number, size or catalog number, the specification is intended to establish the type, function, appearance, and quality required. Unless the item is followed by words such as: 'no like', 'no-equivalent or no-equal', or 'no substitution is permitted'; other items of material or equipment may be used in the Base Bid if they meet the same type,

function, appearance, and quality set forth in the specification. Suitability of substitutions will be at the discretion of the Owner and Engineer.

- The Owner or Project Engineer will not discuss, approve or disapprove any alternate equipment and/or materials before the Bid proposals are opened.
- The Contractor must judge whether substitutions or equivalent equipment, devices or material is of comparable character and quality to those specified in the Contract Documents. The cost of modifications in related work and/or additional drawings which may be required to illustrate or define substitutions or equivalent equipment, devices, or material and its relation to the other parts of portions of the work shall be paid by the Contractor.
- Requests for changes in products, materials, equipment, and methods of construction required by Contract Documents proposed by the Contractor after award of the Contract are considered 'request for substitutions', and must be submitted for review by the Engineer. Any costs associated with the review and acceptance or non-acceptance of the substitute item or method will be the Contractor's responsibility. The Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- Substitute items shall not increase the cost to the Owner and shall conform to the detailed requirements of the item named in the Contract documents.

ORAL STATEMENTS

- No oral statement of any person whosoever shall in any matter or degrees modify or otherwise affect the terms of the Contract Documents.

PRE-QUALIFICATION OF AWARDED CONSTRUCTION CONTRACTOR

- Brevard County Code Chapter 2, Article VII, and Policy BCC-28 "Pre-Qualification of Construction Contractors Prior to Award and Contractor/Subcontractor Evaluations" require the Contractor and specified Subcontractors to submit documents which will demonstrate that the present organization and prior work experience is of adequate size and development to maintain responsible control of the project and to schedule, coordinate and perform the work in an expeditious manner in accordance with the Contract Documents. These documents will provide evidence of adequate project experience, quality workmanship, adherence to project schedule, financial soundness, depth of corporate commitment, ability to provide payment and performance bonds, safety performance, and any other pertinent data obtained from reference checks that is determined by staff, and identified below, to be a measure of the Contractor/Subcontractors qualifications. This information will be relied upon and investigated by the Owner in determining whether the Contractor is the best responsible and most qualified Contractor, and that its

subcontractors are qualified to perform the Work of the Contract. In the event the Contractor is qualified but one of Contractor's subcontractors is not, the Contractor shall have five (5) business days to submit the qualification documents with a substituted subcontractor without any change in the original bid amount.

- The Contractor must submit the following pre-qualification documentation:
 - Contractor's Qualification Statement - AIA Document A305, 1986 Edition on the form provided in Section IV.
 - Most current financial statement (less than one (1) year old). All financial information is confidential and not subject to disclosure under the Public Records Act.
 - Resumes of the Contractor's key personnel, including Project Manager and Superintendent, showing job history, education related to work performed and any license, training, and experience related to the work which that individual will perform. I
 - Items (a) through (c) above must also be completed for the major subcontractor's listed on the bid.
 - List of suppliers on the form provided in Section IV.
 - List of all subcontractors and items and value of their work to be performed by subcontractors on the form provided in Section IV.
 - References obtained from individuals or businesses with which the Contractor or subcontractor has performed work or conducted business.
 - Copies of all Contractor licenses and certifications including certificates for Traffic Control and FDEP Florida Stormwater Erosion and Sediment Control Inspector. The successful Contractor will be required to secure, at its expense and show proof of the proper business tax receipt and/or any other license/certification required of the applicable service/work being performed. Prior to award, the apparent low Bidder will be required to provide proof of license and/or certification within two (2) business days of the posted awarded recommendation and submit copies of license/certifications to the Purchasing Office.
 - Fully executed copy of E-Verify Memorandum of Understanding is required prior to execution of any contract with the County.
- The following subcontractor qualifications are required:

- a) If requested by the Owner, Subcontractors must be capable of providing 100% Payment and 100% Performance Bonds and provide written documentation from the Surety Company documenting this ability.
 - b) Subcontractors must provide proof of a minimum of three (3) years' experience in the trade for which they are being contracted.
- The apparent low contractor, after the formal bid opening, will be required to submit the information above within five (5) business days from Notice of Apparent Lowest Bidder for staff review. If the apparent low contractor cannot provide adequate documents for review, or the submitted documents give indications of a non-stable or unqualified company, the Contractor will be recommended by staff for bid rejection and the apparent second low contractor will be contacted and afforded the previous mentioned five (5) days to submit their pre-qualification documents. This process will continue until the lowest responsive, qualified contractor is established. In the event the Contractor is qualified but one of Contractor's subcontractor's is not, the Contractor shall have five (5) business days to submit the qualification documents of a substitute subcontractor without any change in the original bid amount.
 - The Owner will consider, in determining the qualifications of a Contractor, or a Contractor's subcontractors, the Contractor's and subcontractor's record in the performance of any contracts for construction work with the Owner or with similar public or private bodies or corporations. The Owner expressly reserves the right to reject the bid and/or subcontractor of any Contractor if such record discloses that such Contractor, in the opinion of the Owner, is not the best or most qualified Contractor or that Contractor and/or subcontractor has not properly performed its contracts or has habitually and without just cause neglected the payment of bills, or has otherwise disregarded his obligations, subcontractors, materialmen, suppliers, or employees.
 - The Owner may make such investigation as they deemed necessary to determine the responsibility, qualifications and ability of the Contractor and/or its subcontractor to perform the work, and the Contractor shall furnish to the Owner all such information and data for this purpose as may be requested. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of such Contractor and/or subcontractor, fails to satisfy the Owner that such Contractor is a responsive and qualified Contractor in accordance with the criteria set forth herein, or that such subcontractor is qualified. The ability to secure payment and performance bonds for the Work shall not be conclusive evidence of Contractor and/or subcontractor's financial responsibility. Conditional bids will not be accepted.

SECTION III
BID PROPOSAL AND RELATED FORMS

This section includes the following forms that must be submitted with the bid:

- Bid Pricing Form
- Trench Safety Act Compliance
- Minority Employment Information Form
- Non-Collusion Affidavit of Prime Bidder
- Sworn Statement Pursuant to Section 287.133(3)(A). Florida Statutes on Public Entity Crimes
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- Bid Bond Form
- Right of Entry Form
- References Form
- E-Verify Affidavit
- Copy of the fully executed E-Verify Memorandum of Understanding for the business
- W-9 Form -- Latest Edition
- Certificate of Insurance
- Confirmation of Drug Free Workplace Form
- Insurance Indemnification Acknowledgement
- Scrutinized Vendor Affidavit
- Statement of No Bid (if applicable)

BID PRICING FORM

**Sykes Creek Phase I Muck Removal Project
BID NO. B-X-XX-XX**

Attachment A.

TRENCH SAFETY ACT COMPLIANCE
Sykes Creek Phase I Muck Removal Project
BID NO. B-X-XX-XX

1. The Contractor acknowledges the existence of the Florida Trench Safety Act (hereinafter called the "Act") and the requirements established herein.
2. The Contractor further acknowledges that the Act established in Federal excavation safety standards set forth at 29 CFR Part 1926, Subpart P as the Interim State standard applicable to this project.
3. The Contractor will comply with all applicable trench safety standards, during all phases of the work, if awarded the contract, and will ensure that all subcontractors will also comply with the Act.
4. The Contractor will consider the geotechnical information available from the Owner, from its own sources and all other relevant information in its design of the trench safety system it will employ on the subject project. The Contractor acknowledges that the Owner is not obligated to provide such information, that Contractor is not to rely solely on such information if provided, and that Contractor is solely responsible for the selection of the date on which he relies in designing said safety system, as well as for the system itself.
5. The Contractor acknowledges that included in the total price in the bid pricing form are costs for complying with the Florida Trench Safety Act which is in effect as of October 1, 1990. The undersigned further identifies the costs to be \$ _____ per linear foot.
6. The amount in Item 5 includes the following Trench Safety Compliance Methods and the units of each safety measure. The unit costs and the unit prices are shown solely for the purpose of compliance with the procedural requirements of the Act.

Trench Safety Compliance Method	Unit (LF, SY)	Estimated Quantity	Unit Cost	Extended Cost
A. _____	_____	_____	_____	_____
B. _____	_____	_____	_____	_____
C. _____	_____	_____	_____	_____
D. _____	_____	_____	_____	_____

Award of the bid to which this certification and disclosure applies in no way represents that the Owner or its representatives have evaluated or determined that the above costs are adequate to comply with the applicable trench safety requirements, nor does it in anyway relieve the undersigned of his sole responsibility for complying with all applicable safety requirements.

Signature: _____

NON-COLLUSION AFFIDAVIT OF PRIME CONTRACTOR
Sykes Creek Phase I Muck Removal Project
BID NO. B-X-XX-XX

State of _____

County of _____

_____, being duly sworn, deposes and says that:

- (1) He is _____ of _____, the Contractor that has submitted the attached bid;
- (2) He is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid;
- (3) Such bid is genuine and is not a collusive or sham bid;
- (4) Neither the said Contractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Contractor, firm or person to submit a collusive or sham bid in connection with the Contract for which the attached bid has been submitted or to refrain from proposing in connection with such Contract, or has in any manner, directly or indirectly, sought by Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Contractor, firm or person to fix the price or prices in the attached bid or of any other Contractor, or to fix any overhead, profit or cost element of the bid price or the bid price of any other Contractor, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Brevard County, Florida, or any person interested in the Contract; and
- (5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the contractor or any of this agents, representatives, Owners, employees, or parties of interest, including affiant.

(Signature)

(Title)

Subscribed and sworn to before me this _____ day of _____, 2019.

_____ is personally known to me and/or produced identification _____ (type).

Notary Public

My Commission expires _____ Commissioner # _____

SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(A),
FLORIDA STATUTES ON PUBLIC ENTITY CRIME

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to _____

By _____

(print this individual's name and title)

for _____

(print name of entity submitting statements)

whose business address is _____

and if applicable whose Federal Employer Identification Number (FEIN) is _____

If the entity has no FEIN, include the Social Security Number of the individual signing this sworn Statement:

2. I understand that a "public entity crime" as defined in paragraph 287.133(1)(a), Florida Statutes, mean a violation of any state or federal law by a person with respect to and directly related to the transactions of business with any public entity or with an agency or political subdivision of any other state or with the United States including, but not limited to any bid or contract for goods or services to be provided to any public entity or any agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in paragraph 287.133(1)(b), Florida Statutes means a finding of guilt or a conviction of a public entity crime, with or without adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a Jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in paragraph 287.133(1)(a), Florida Statutes, means:
1. A predecessor or successor of a person convicted of public entity crime; or
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement which I have marked below is true in a relation to the entity submitting this sworn statement. (Please indicate which statement applies).

____ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or any affiliate of the entity has been charged with and convicted of a public entity crime within the past 36 months.

____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime within the past 36 months. AND (Please indicate which additional statement applies).

____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime within the past 36 months. However, there has been a subsequent proceeding before a Hearing Officers of the State of Florida, Division of Administrative Hearings and the Final Order by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attached is a copy of the final order).

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THE PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED AND FOR THE PERIOD OF THE CONTRACT ENTERED INTO, WHICHEVER PERIOD IS LONGER. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

City of _____

STATE OF FLORIDA

Sworn and subscribed before me this _____ day of _____, 2019 by

_____ who is Personally known to me _____

Or who produced identification - _____
(Type of Identification)

(Signature) Notary Public—State of Florida

(Printed, typed or stamped commissioned name of notary public)

My commission expires _____ (SEAL)

**Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion**

Contractor Covered Transactions

- 1) The prospective contractor of the Recipient _____, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded from participation in the transaction by any Federal department or agency.

- 2) Where the Recipient's contractor is unable to certify to the above statement, the prospective contractor shall attach an explanation to this form.

Contractor:

By: _____
Signature

Recipient's Name

Name and Title

Division Contract Number

Street Address

City, State, Zip

Date

BID BOND FORM

KNOW ALL MEN BY THESE PRESENTS, That we, _____, of _____, hereinafter called the Principal, and _____, (Surety), a corporation organized and existing under the Laws of the State of _____, and authorized to transact business in the State of Florida, _____ as Surety, hereinafter called Surety, are held and firmly bound unto the (Board of County Commissioners), hereinafter called Obligee, in the Penal sum of five percent (5%) of the amount of bid, good and lawful money of the United States of America, for the payment of which the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. The Condition of this Obligation is such, that,

WHEREAS the Principal has submitted a bid to the Obligee on a contract for the construction of

Sykes Creek Phase I Muck Removal Project

BID NO. B-X-XX-XX

NOW THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the Bidding or Contract Documents with good, qualified and sufficient surety for the faithful performance of such construction for the prompt payment of labor and material furnished in the prosecution thereof, then this obligation shall be null and void; otherwise this bid is to remain in full force and effect for the payment to Obligee of the stated penal sum hereof.

In witness whereof, we have hereunto set our signatures and seal this ____ day of _____, 2019, all pursuant to due authorization.

By _____
Principal (Seal)

By _____
Surety

By _____
Attorney-in-Fact (in accordance with the attached Power of Attorney)

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public in and for the State and County aforesaid, do hereby certify that _____, and _____, whose names are signed to the foregoing bond, this day personally appeared before me in my State and County aforesaid and acknowledged the same. Given under my hand and seal this ____ day of _____, 2019.

(Notary Public) _____ Commission expires: _____

VENDOR AFFIDAVIT REGARDING SCRUTINIZED COMPANY LIST

Awarded Contractor shall certify that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S. If the Agreement is for more than \$1,000,000 the Contractor further certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S.

For Contracts of any amount, if the County determines the Contractor submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the County shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the County's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or on a case-by-case basis the County may choose to maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met. For Contracts \$1,000,000 and greater, if the County determines the Contractor submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies with Activities in the Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the County shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the County's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or on a case-by-case basis the County may choose to maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met.

STATE OF FLORIDA

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared

_____, who, being by me first duly sworn, made the following statement:

1. The Business address of _____ (name of bidder or contractor) is _____.
2. My relationship to _____ (name of bidder or contractor) is _____ (relationship such as sole proprietor, partner, president, vice president).

3. I understand that "Boycott of Israel" has the same meaning as defined in §215.4725, Florida Statutes, and means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the State Board of Administration to be evidence that a company is participating in a boycott of Israel. The term does not include restrictive trade practices or boycotts fostered or imposed by foreign countries against Israel.

4. I understand that "business operations" means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

5. _____ (name of the bidder or contractor) is not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, or is engaged in a boycott of Israel.

6. _____ (name of the bidder or contractor) is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes.

7. _____ (name of the bidder or contractor) is not engaged in business operations in Cuba or Syria.

Signature

Sworn to and subscribed before me in the state and county first mentioned above on the _____ day of _____, 20____.

Notary Public

My commission expires:



TEMPORARY RIGHT OF ENTRY

For and in consideration of the benefits accruing to _____, hereinafter called the **OWNERS**, whose physical address is _____, do hereby give, grant, bargain and release to the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, hereinafter called **COUNTY**, whose physical address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940, a "**Temporary Right of Entry**" on a portion of the lands belonging to the Owners as described in "Exhibit A", attached hereto, for purposes of _____

THIS EASEMENT is granted upon the condition that the work shall be performed in such manner that any and all other existing structural improvements located upon the property will not be damaged. In the event of accidental damage to private property (e.g. signs, mailbox, curbing, shrubbery, trees, etc.) those items shall be repaired, replaced, or restored to their original condition or the equivalent thereof.

THIS EASEMENT shall expire upon the completion of work.

Dated this _____ day of _____, 20____.

Signed, sealed, and delivered
in the presence of:

Witness

(Print Name)

This Document Does Not Need Notarized

This Document Will Not Be Recorded in the Public Records of Brevard County

**SYKES CREEK PHASE I MUCK REMOVAL
B-X-XX-XX
REFERENCE FORM**

List a minimum of three (3) / maximum five (5) customers for the services specified in the solicitation in the spaces provided.

Note: A contact person shall be someone who has personal knowledge of the Contractor's performance for the specific requirement listed. Contact person must have been informed that they are being used as a reference and that the County may be calling them. Do not list persons who will be unable to answer specific questions regarding the requirements.

Ref #1. Customer/Client: _____
Date of Services: _____
Description of Services: _____
Street Address: _____
City, State, ZIP Code: _____
Telephone #: _____ Fax #: _____
Contact Person: _____ Email: _____

Ref #2. Customer/Client: _____
Date of Services: _____
Description of Services: _____
Street Address: _____
City, State, ZIP Code: _____
Telephone #: _____ Fax #: _____
Contact Person: _____ Email: _____

Ref #3. Customer/Client: _____
Date of Services: _____
Description of Services: _____
Street Address: _____
City, State, ZIP Code: _____
Telephone #: _____ Fax #: _____
Contact Person: _____ Email: _____

Ref #4. Customer/Client: _____
Date of Services: _____
Description of Services: _____
Street Address: _____
City, State, ZIP Code: _____
Telephone #: _____ Fax #: _____
Contact Person: _____ Email: _____

Ref #5. Customer/Client: _____
Date of Services: _____
Description of Services: _____
Street Address: _____
City, State, ZIP Code: _____
Telephone #: _____ Fax #: _____
Contact Person: _____ Email: _____

CONTRACTOR NAME _____

ADDRESS _____

PRINTED SIGNATURE _____

AUTHORIZED SIGNATURE _____

TELEPHONE # _____ FAX# _____ DATE _____

EMAIL: _____

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

CONFIRMATION OF E-VERIFY PARTICIPATION FORM
(This form is to be submitted along with a copy of the fully
executed E-Verify Memorandum of Understanding for the
business)

In accordance with BCC Policy 25 all Contractors that conduct business with Brevard County are required to be registered with and utilize the U.S. Department of Homeland Security's E-Verify System in accordance with the terms governing use of the system.

1. The County shall not enter into, or renew, a contract for goods or services with a Contractor that is not enrolled into E-Verify. Any Contractor providing goods or services to the County shall be contractually required to utilize E-Verify to confirm the employment eligibility of any employee hired during the term of the contract.
2. Contractors shall provide acceptable evidence of their enrollment at the time of the submission of the Contractor's proposal. Acceptable evidence shall include, but not be limited to, a copy of the fully executed E-Verify Memorandum of Understanding for the business and/or a signed copy of this affidavit.
3. All Contractors must meet this requirement unless:
 - a. The contract is solely for goods-based procurement where no services are provided; or
 - b. Where the requirement is waived by the Board of County Commissioners.
4. A Contractor who registers with and participates in the E-Verify program may not be barred or penalized under BCC Policy 25(3)(V) if, as a result of receiving inaccurate verification information from the E-Verify program, the contractor hires or employs a person who is not eligible for employment.
5. Contractors shall expressly require any contractor or subcontractor performing work or providing services pursuant to the County contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
6. Nothing in BCC Policy 25(3)(V) may be construed to allow intentional discrimination of any class protected by law.

As the person authorized to sign the statement, I certify that this firm complies with the above requirements and the BCC-25. This form is in conjunction with Brevard County's General Conditions, Unauthorized Alien Workers.

Business Name

Bid Number and Name

Authorized Representative's Signature

Date

Name

Position



SECTION IV

CONTRACTOR PREQUALIFICATION POLICY AND FORMS

- BCC Policy BCC-28
- Contractor's Qualification Statement (AIA Document A305)
- Copies of all Contractor Licenses and Certificates
- Minority Employment for each Subcontractor
- List of Major Suppliers and their Materials
- List of Major Subcontractors and Value of their Work
- Special Certification and/or Licenses for FDOT Maintenance of Traffic and FDEP Erosion and Sediment Control Inspector

These forms need to be submitted within five (5) days after Notice of Apparent Lowest Bidder is provided by the County to the lowest qualified responsive contractor. Additional submittal requirements are listed in Section II, Article 25.

- **BCC Policy BCC-28 (next page)**

POLICY

TITLE: Pre-Qualification of Construction Bidders Prior To Award	NUMBER: BCC-28
	CANCELS December 21, 2010
	APPROVED: October 8, 2013
	ORIGINATOR: Central Services
	REVIEW: October 8, 2016

I. OBJECTIVE

To delineate and define the process for pre-qualifying contractors prior to award by the Board of County Commissioners in order to evaluate a Contractor's and/or Subcontractor's eligibility for future Brevard County projects.

This Policy requires the Contractor and/or Subcontractor to submit documents which will provide evidence of adequate project experience, quality workmanship, adherence to project schedule, financial soundness, depth of corporate commitment, bid bond, prospective payment and performance bond rating in the surety market, safety performance, and any other pertinent data obtained from reference checks that is determined by staff to be a measure of the Contractor's/Subcontractor's qualifications.

II. REFERENCES

- A. Brevard County Policy BCC-25, Procurement Policy.
- B. AIA Document A305, Contractor's Qualification Statement.
- C. Brevard County Administrative Order AO-45, Post Project Contractor/Subcontractor Evaluation Form.
- D. Ordinance 98-37, Pre-Qualification of Construction Bidders Prior to Award.

III. DIRECTIVES

- A. The following pre-qualification information of the awarded Contractor will be utilized for all construction projects exceeding \$50,000.00:
 - 1. Contractor's Qualification Statement-AIA Document A305, most recent Edition.
 - 2. Most current Financial Statement (less than one (1) year).
 - 3. Resumes of Contractor/Subcontractor's key personnel down, including Project Manager and Superintendent level.
 - 4. The Bid Bond, Public Entity Crime Affidavit and Non-Collusion Affidavit (submitted with the Bid) will be reviewed and verified.
 - 5. List of subcontractors and suppliers and items of work to be performed by the Contractor's workforce.
 - 6. Contractor's Qualification Statement – AIA Document A305, most recent Edition for subcontractor's determined by staff and identified in the bidding documents to be critical to the success of the project. Key subcontractors and their qualifications are to be identified in the bid documents.

7. Any other pertinent qualifications, evaluations from past projects, data or information determined by staff to be critical to the success of the project.
- B. The apparent low contractors, after the formal bid opening, will be required to submit the information above within five (5) days for review and approval by the appropriate Review and Qualification Committee listed below. If the apparent low contractor cannot provide adequate documents for review, or the submitted documents give indications of a non-stable or unqualified company, the Contractor will be recommended by the Review and Qualification Committee for bid rejection and the apparent second low contractor will be contacted and afforded the previous mentioned five (5) days to submit their pre-qualifications documents. This process would continue until a most responsive, responsible contractor is established.
- C. The following Review and Qualification Committees and committee members (or designees) are hereby established:
1. Public Works Department Projects Public Works
 Department Director Public Works Engineering
 Manager
 Public Works Engineering Design, Permitting & Construction
 Manager
 2. Utility Services or Natural Resources Management Projects
 Assistant County Manager for Development & Public Services Group
 Utility Services Department Director
 Natural Resources Management Department Director
 3. Solid Waste Projects
 Assistant County Manager for Development & Public Services Group
 Solid Waste Management Department Director
 Utility Services Department Director
 4. Parks and Recreation Projects – REFERENDUM Projects only
 Parks and Recreation Department Director Central
 Services Department Director Public Works
 Department Director
(with the consolidation of P&R construction and Facilities construction, all future pre-qualification committees will fall under General Construction Projects)
 5. General Construction Projects (any Department relying on Facilities to oversee their projects including special districts, agencies or other County project not otherwise encompassed herein)
 Central Services Department Director
 Deputy County Manager
 User Agency Department Director
 6. Landscaping Projects
 Public Works Department Director
 Parks and Recreation Department Director
 Public Works Department - Landscaping Operations Manager

7. Housing & Human Services Department Public
Works Department Director Central Services
Department Director User Agency Department
Director

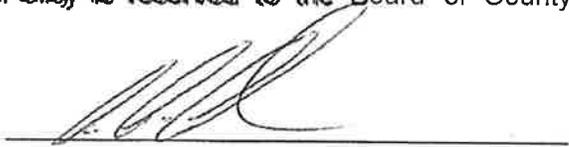
IV. RESERVATION OF AUTHORITY

The authority to issue and/or revise this ~~Policy~~ **is reserved to the Board of County Commissioners.**

Attest:



Scott Ellis, Clerk of Court



Andy Anderson, Chairman
Board of County Commissioners
Brevard County, Florida

As approved by the Board: 10/8/2013

**FORM - Contractor's Qualification Statement
(AIA Document A305)**

(next page)



AIA Document A305TM - 1986

Contractor's Qualification Statement

The Undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

SUBMITTED TO:

ADDRESS:

SUBMITTED BY:

NAME:

ADDRESS:

PRINCIPAL OFFICE:

- Corporation
- Partnership
- Individual
- Joint Venture
- Other

NAME OF PROJECT *(if applicable)*:

TYPE OF WORK (file separate form for each Classification of Work):

- General Construction
- HVAC
- Electrical
- Plumbing
- Other (please specify)

§ 1. ORGANIZATION

§ 1.1 How many years has your organization been in business as a Contractor?

§ 1.2 How many years has your organization been in business under its present business name?

§ 1.2.1 Under what other or former names has your organization operated?

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This form is approved and recommended by the American Institute of Architects (AIA) and The Associated General Contractors of America (AGC) for use in evaluating the qualifications of contractors. No endorsement of the submitting party or verification of the information is made by AIA or AGC.

§ 1.3 If your organization is a corporation, answer the following:

§ 1.3.1 Date of incorporation:

§ 1.3.2 State of incorporation:

§ 1.3.3 President's name:

§ 1.3.4 Vice-president's name(s)

§ 1.3.5 Secretary's name:

§ 1.3.6 Treasurer's name:

§ 1.4 If your organization is a partnership, answer the following:

§ 1.4.1 Date of organization:

§ 1.4.2 Type of partnership (if applicable):

§ 1.4.3 Name(s) of general partner(s)

§ 1.5 If your organization is individually owned, answer the following:

§ 1.5.1 Date of organization:

§ 1.5.2 Name of owner:

§ 1.6 If the form of your organization is other than those listed above, describe it and name the principals:

§ 2. LICENSING

§ 2.1 List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.

§ 2.2 List jurisdictions in which your organization's partnership or trade name is filed.

§ 3. EXPERIENCE

§ 3.1 List the categories of work that your organization normally performs with its own forces.

§ 3.2 Claims and Suits. (If the answer to any of the questions below is yes, please attach details.)

§ 3.2.1 Has your organization ever failed to complete any work awarded to it?

§ 3.2.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

§ 3.2.3 Has your organization filed any law suits or requested arbitration with regard to construction contracts within the last five years?

§ 3.3 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please attach details.)

§ 3.4 On a separate sheet, list major construction projects your organization has in progress, giving the name of project, owner, architect, contract amount, percent complete and scheduled completion date.

§ 3.4.1 State total worth of work in progress and under contract:

§ 3.5 On a separate sheet, list the major projects your organization has completed in the past five years, giving the name of project, owner, architect, contract amount, date of completion and percentage of the cost of the work performed with your own forces.

§ 3.5.1 State average annual amount of construction work performed during the past five years:

§ 3.6 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.

§ 4. REFERENCES

§ 4.1 Trade References:

§ 4.2 Bank References:

§ 4.3 Surety:

§ 4.3.1 Name of bonding company:

§ 4.3.2 Name and address of agent:

§ 5. FINANCING

§ 5.1 Financial Statement.

§ 5.1.1 Attach a financial statement, preferably audited, including your organization's latest balance sheet and income statement showing the following items:

Current Assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses);

Net Fixed Assets;

Other Assets;

Current Liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes);

Other Liabilities (e.g., capital, capital stock, authorized and outstanding shares par values, earned surplus and retained earnings).

§ 5.1.2 Name and address of firm preparing attached financial statement, and date thereof:

§ 5.1.3 Is the attached financial statement for the identical organization named on page one?

§ 5.1.4 If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsidiary).

§ 5.2 Will the organization whose financial statement is attached act as guarantor of the contract for construction?

§ 6. SIGNATURE

§ 6.1 Dated at this day of

Name of

Organization: By:

Title:

(Paragraphs deleted)

**FORM - List of Major Suppliers and
Value of their Work**

(next page)

LIST OF MAJOR SUPPLIERS

The Undersigned states that the following is a full and complete list of the suppliers proposed on this Project, including the class or type of material to be supplied by each supplier. The Undersigned agrees that the suppliers used and the material supplied by each supplier will not be altered from the following list without prior written consent of the Owner through the Owner's Engineer.

	<u>SUPPLIER AND ADDRESS</u>		<u>CLASS OR TYPE OF MATERIAL</u>		<u>VALUE OF WORK (\$)</u>
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					
(7)					

CONTRACTOR: _____
Name of Firm

By: _____
Signature of Principal

Name: _____
Print or Type Principal's Name

Title: _____

Date: _____

**FORM - List of Major Subcontractors and
Value of their work**

(next page)

LIST OF MAJOR SUBCONTRACTORS AND VALUE OF THEIR WORK

The Undersigned states that the following is a full and complete list of all of the subcontractors proposed on this Project, including the class or specialty of their work and the dollar value of the subcontracted work (excluding the Contractor's markup) to be performed by each. The Undersigned agrees that the work on this project for these Subcontractors will not be altered without prior written consent of the Owner through the Owner's Engineer.

	<u>SUBCONTRACTOR AND ADDRESS</u>	<u>SPECIALTY OR CLASS OF WORK</u>	<u>VALUE OF WORK (\$)</u>
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			
(7)			

CONTRACTOR: _____
Name of Firm

By: _____
Signature of Principal

Name: _____
Print or Type Principal's Name

Title: _____

Date: _____

SECTION V

CONTRACT AND CERTIFICATE

This section includes the following forms that must be executed by the selected Contractor upon notification by the Owner:

- Contract
- Certificate

These forms DO NOT need to be submitted with the Bid.

CONTRACT

THIS AGREEMENT, made and entered into this ____ day of _____, 2019, A.D., by and between Brevard County, Florida, party of the first part (hereinafter sometimes called the "Owner"), and _____, party of the second part (hereinafter sometimes called the "Contractor").

WITNESSETH: That the parties hereto, for the consideration hereinafter set forth, mutually agree as follows:

1. SCOPE OF THE WORK

The Contractor shall furnish all labor, materials, equipment, machinery, tools, apparatus, and transportation and perform all of the work shown on and described in the Specifications and Contract Documents entitled:

**Sykes Creek Phase I Muck Removal Project
BID NO. B-X-XX-XX**

As prepared by Taylor Engineer Inc., acting as, and in the Contract Documents entitled as the Owner's Engineer, and shall do everything required by these Contract Documents. The project generally includes the dredging, dewatering and disposal of approximately 60,000 cubic yards of organic sediments from the Sykes Creek Phase I Project Area as described herein and as depicted in the Project Drawings. The dredging shall be accomplished by hydraulic dredging methods.

The Contractor is responsible for developing various plans for review and approval by the Owner and the Owner's Engineer that include the proposed dredging, dewatering and spoil handling and comply with all applicable Federal, state, and local permits and regulations. Details of the required plans are found within the Technical Specifications. Conditions and Specifications relevant to this project are provided in detail as part of the Bid Documents.

2. THE CONTRACT SUM

- 2.1 The Owner shall pay to the Contractor for the faithful performance of the Contract, in lawful money of the United States, and subject to additions and deductions as provided in the Contract Documents.
- 2.2 Based upon the price shown in the Proposal heretofore submitted to the Owner by the Contractor, a copy of said Proposal being a part of these Contract Documents, the aggregate amount of this Contract is the sum of:

3. COMMENCEMENT AND COMPLETION OF WORK

- 3.1 The Contractor shall commence work within 15 calendar days after issuance of Notice to Proceed.
- 3.2 The Contractor shall prosecute the work with faithfulness and diligence and shall cause substantial completion of the work not later than ONE THOUSAND AND NINETY FIVE (1,095) calendar days after the issuance of Notice to Proceed and cause final completion of the work within SIXTY (60) days after substantial completion.
- 3.3 Prior to commencing the work, the Contractor shall execute, deliver to the Owner, and record in the public records of Brevard County, required payment and performance bonds in substantially the same format provided in Section VI of the General Conditions.

4. CONTRACTOR'S ACCEPTANCE OF CONDITIONS

- 4.1 The Contractor hereby agrees that the project site has been carefully examined and that sufficient observations have been made such that Contractor is completely familiar with all site conditions and requirements as they relate to the work described in these Contract Documents, and assumes full responsibility therefore.
- 4.2 The provisions of this Contract shall control any inconsistent provisions contained in the specifications. All Drawings and Specifications have been read and carefully considered by the Contractor, who understands and agrees to their sufficiency for the work to be done. It is expressly agreed that under no circumstances, conditions or situations, shall this Contract be more strongly construed against the Owner than against the Contractor and the Surety.
- 4.3 Any ambiguity or uncertainty in the Drawings or Specifications shall be interpreted and construed by the Owner's Engineer and the decision shall be final and binding upon all parties.
- 4.4 It is distinctly understood and agreed that the passing, approval and acceptance of any part of the work or material by the Owner, the Owner's Engineer, or by any agent or representative of the Owner or Owner's Engineer as in compliance with the terms of this Contract and of the Drawings and Specifications covering said work, shall not operate as a waiver by the Owner of strict compliance with the terms of this Contract, and/or the Drawings and Specifications covering said work; and the Owner may require the Contractor and the surety to repair, replace, restore and/or make the work comply strictly, and in all things, with this Contract and the Drawings and Specifications. Any and all of said work and/or materials which within a period of one year from and after the date of the passing, approval, and/or acceptance of any such work or material, are found to be defective or to fail in any way to comply with this Contract or with the Drawings and Specifications, shall be reconstructed as directed by the Owner. This provision

shall not apply to materials or equipment normally expected to deteriorate or wear out and become subject to normal repair and replacement before their condition is discovered. The Contractor shall not be required to do normal maintenance work under the guarantee provisions. Failure on the part of the Contractor and the Surety to immediately repair or replace any such defective materials and workmanship shall entitle the Owner, in the Owner's sole discretion, to replace or repair the same and, after notice, recover the reasonable cost of such replacement and repair from the Contractor and the Surety, who shall in any event be jointly and severally liable to the Owner for all damage, loss and expense caused to the Owner by reason of the Contractor's breach of this Contract and the Contractor's failure to comply strictly and in all things with this Contract and with the Drawings and Specifications.

5. LIQUIDATED DAMAGES

- 5.1 It is mutually agreed that time is of the essence of this Contract and should the Contractor fail to complete the work within the specified time, or any authorized extension thereof, there shall be deducted from the compensation otherwise to be paid to the Contractor, and the Owner will retain the amount of liquidated damages stated in Section 8-10.2 of F.D.O.T. Standard Specifications for Road and Bridge Construction, per calendar day elapsing beyond the specified time for completion or any authorized extension thereof, which sum shall represent the actual damages which the Owner will have sustained by failure of the Contractor to complete the work within the specified time; it being further agreed that said sum is not a penalty, but is the stipulated amount of damages sustained by the Owner in the event of such default by the Contractor.
- 5.2 For the purposes of this Article, the day of final acceptance of the work shall be considered a day of delay, and the scheduled day of completion of the work shall be considered a day scheduled for production.
- 5.3 The Owner has the right to deduct, as payment on such liquidated damages, against any money the Owner owes the Contractor.
- 5.4 The Owner does not waive its right to liquidated damages due under the Contract by allowing the Contractor to continue and to finish the work, or any part of it, after the expiration of the Contract Time including granted time extensions.
- 5.5 Contract days shall stop for purposes of determining if or how much liquidated damages shall be accrued upon substantial completion which shall occur as described on Section II, Definitions, Substantial Completion.

6. PARTIAL AND FINAL PAYMENTS

In accordance with the provisions fully set forth in the General Conditions (Section VII), and subject to additions and deductions as provided, the Owner shall pay the Contractor as follows:

- 6.1 Within 30 days after receipt of the Contractor's request for partial payment by the Owner, the Owner shall make partial payments to the Contractor, on the basis of the estimate of work as approved by the Owner or the Owner's Engineer, for work performed during the preceding calendar month, less ten percent (10%) of the amount of such estimate which is to be retained by the Owner as retainage. After the Owner or Owner's Engineer determine that 50-percent of the construction has been completed pursuant to the Contract, the Contractor shall reduce the amount withheld from each subsequent progress payment to five (5) percent of the payment until all work has been performed, and accepted by the Owner or Owner's Engineer, strictly in accordance with this Agreement. Notwithstanding the foregoing, pursuant to section 255.05(11), Florida Statutes, when the Contractor has furnished and recorded a payment and performance bond and provided the Owner with a written consent from the Surety regarding the Project or payment in question, no such releases shall be required. The Surety may, in a writing served on the Owner, revoke its consent or direct that the Owner withhold a specified amount from a payment, which shall be effective upon receipt.
- 6.2 Upon submission by the Contractor of evidence satisfactory to the Owner that all payrolls, material bills and other costs incurred by the Contractor in connection with the construction of the work have been paid in full, and also, after all guarantees that may be required have been furnished and are found acceptable by the Owner, final payment on account of this Agreement shall be made within sixty (60) days after completion by the Contractor of all work covered by this Agreement and acceptance of such work by the Owner.
- 6.3 Contractor acknowledges that, pursuant to Florida law, the Contractor may not lien Owner's interest in the Project site. Contractor agrees to advise all subcontractors and material suppliers of the non lienable nature of the project and to further furnish each such person or entity a copy of the Labor and Material Payment Bond for the project.

7. INDEPENDENT CONTRACTOR

It is hereby mutually agreed that the Contractor is and shall remain an independent contractor and is not an employee or agent of the Owner. The Contractor shall procure, pay for, and maintain Workers' Compensation insurance in an amount as required by law.

8. ADDITIONAL BOND

It is further mutually agreed between parties hereto that if, at any time after the execution of this Agreement and the Public Construction Performance Bond and the

Public Construction Payment Bond hereto attached for its faithful performance, the Owner shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at the Contractor's expense, and within three days after the receipt of Notice from the Owner to do so, furnish an additional bond or bonds, in such form and amount, and with such sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.

9. NOTICE

All notices and written communication between the parties shall be sent by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. Any and all notices required by this Agreement shall be delivered to the parties at the addresses identified below:

Owner:
Brevard County Board of County Commissioners
Department of Natural Resources
2725 Judge Fran Jamieson Way
Building A, Room 219
Viera, FL 32940

Contractor:

10. CONTRACT DOCUMENTS

The Contract Documents, as that term is defined in the Instructions to Contractors and attached hereto, are as fully a part of this Contract as if herein repeated, whether or not those documents are actually attached to this Contract. The permit information and permit requirements are contained in the Appendix of the Technical Specifications. The Drawings are provided separately.

11. ATTORNEY'S FEES

In the event of any legal action to enforce the terms of this Contract, each party shall bear its own attorney's fees and costs, provided, this clause shall only apply to the Contractor and County, as parties to this agreement, and shall not be construed to prevent the Owner from covering its attorney's fees, expert witness fees or costs against a surety in accordance with the provisions of the performance

bond or under any provision of state law requiring the surety to pay attorney's fees or costs.

12. GOVERNING LAWS

This Agreement shall be governed, interpreted and construed according to the laws of the State of Florida.

13. COMPLIANCE WITH STATUTES

It shall be the Contractor's responsibility to be aware of and comply with all federal, state and local laws.

14. VENUE

Venue for any legal action by any party to this Agreement to interpret, construe, or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County Florida, and any trial shall be non-jury.

15. CONFLICT OF INTEREST

15.1 The Contractor shall not engage the services of any person or persons now employed by the County, including any department, agency board or commission thereof, to provide services relating to this Contract without written consent from the County.

15.2 The Contractor shall not accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to sub-agreements.

15.3 The Contractor shall not award a contract or subcontract under this Agreement to any company who the Owner has a financial or any other interest in, including but not limited to employing an employee of the Owner or any member of an employee's, agents, or officer's immediate family.

16. INFORMATION RELEASE/GRANTOR RECOGNITION

News releases, publicity releases, or advertisements relating to this Agreement or the tasks or projects associated with the project, shall be submitted in writing to the County and be approved in advance of any release or publication. Releases shall identify the funding entity as well as the funding source.

17. INDEMNIFICATION

The Contractor shall indemnify and save harmless to the limit allowed by law, the Owner and the Owner's Engineer and their agents, and employees from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the performance of the work, provided that any such

claim, damage, loss or expenses (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The obligation of the Contractor under this Article shall not extend to the liability of the Owner's Engineer and their agents or employees arising out of errors or omissions in maps, drawings, opinions, reports, surveys, contract modifications, designs or specifications which have been prepared by the Owner's Engineer. The Contractor agrees that \$1,000 shall be included as specific consideration for this indemnification in the bid price for the work covered by this Contract. This indemnification shall survive the term of this Agreement.

18. SURVIVAL

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

19. MODIFICATION

This Agreement, together with Contract Documents, constitutes the entire contract between the Owner and the Contractor and supersedes all prior written or oral understandings. No modification of this agreement shall be binding on Owner or Contractor unless reduced to writing and executed by a duly authorized representative of Owner and Contractor.

20. DISCOUNTS

All discounts, EXCEPT THOSE FOR PROMPT PAYMENT, shall be considered in determining the lowest net cost for bid evaluation purposes

18. PUBLIC RECORDS

18.1 Contractor shall comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in Section 119.011(12), F.S. Contractor shall keep and maintain public records required by the County to perform the services under this Agreement.

18.2 This Agreement may be unilaterally canceled by the County for refusal by the Contractor to either provide to the County upon request, or to allow inspection

and copying of all public records made or received by the Contractor in conjunction with this Agreement and subject to disclosure under Chapter 119, F.S., and Section 24(a), Article I, Florida Constitution.

18.3 If Contractor meets the definition of "Contractor" found in Section 119.0701(1)(a), F.S.; [i.e., an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency], then the following requirements apply:

i. Pursuant to Section 119.0701, F.S., a request to inspect or copy public records relating to this Agreement for services must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify the Contractor of the request, and the Contractor must provide the records to the County or allow the records to be inspected or copied within a reasonable time. If the Contractor fails to provide the public records to the County within a reasonable time, the Contractor may be subject to penalties under s. 119.10,

ii. Upon request from the County's custodian of public records, the Contractor shall provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

iii. The Contractor shall identify and ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the County.

iv. Upon completion of the Agreement, the Contractor shall transfer, at no cost to the County, all public records in possession of the Contractor or keep and maintain public records required by the County to perform the services under this Agreement. If the Contractor transfers all public records to the County upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records that are stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is accessible by and compatible with the information technology systems of the County.

18.4. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC

RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS FOR THE NATURAL RESOURCES MANAGEMENT OFFICE by telephone at (321) 633-2016, by email at Mary.Blakely@brevardfl.gov, or at the mailing address below:

**Brevard County Natural Resources Management Department
ATTN: Custodian of Records
2725 Judge Fran Jamieson Way
Building A, Room 219
Viera, FL 32940**

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by its duly authorized representatives, effective as of the date on which the last of the parties hereto executes this Agreement.

Attest:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA
OWNER



Bryan A. Lober Vice Chair
As approved by the Board on: 5/21/19

Reviewed for legal form and content by:

Christine Valliere, Assistant County Attorney

(SEAL)

Witnessed in the presence of**

CONTRACTOR

Attest:

_____ (Seal)

(*) In the event that the Contractor is a Corporation, there shall be attached to each counterpart, a certified copy of a resolution of the Board of Directors of the Corporation, authorizing the officer who signs the Contract to do so in its behalf.

(**) Two witnesses are required when Contractor is sole ownership or partnership.

CERTIFICATE

STATE OF FLORIDA

COUNTY OF _____

I HEREBY CERTIFY that at a meeting of the Board of Directors of _____, a corporation under the laws of the State of _____, held on _____, 2019, the following resolution was duly passed and adopted:

"RESOLVED, that _____, as _____ President of the corporation, be is hereby authorized to execute the Contract dated _____, 2019, between BREVARD COUNTY, FLORIDA, and this corporation, and that the execution thereof, attested by the Secretary of the corporation and with corporate seal affixed, shall be the official act and deed of this corporation."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the corporation on this ___ day of _____, 2019.

Secretary of Corporation

SECTION VI

CONTRACT BONDS AND SAMPLE CERTIFICATES

This section includes the following forms that must be executed by the Awarded Contractor upon notification by the Owner:

- Public Construction Payment Bond
- Certificate as to Corporate Principal for Payment Bond
- Public Construction Performance and Guarantee Bond
- Certificate as to Corporate Principal for Performance and Guarantee Bond

These forms DO NOT need to be submitted with the Bid.

PUBLIC CONSTRUCTION PAYMENT BOND
Sykes Creek Phase I Muck Removal Project
BID NO. B-X-XX-XX

BY THIS BOND, We _____, as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ (\$ _____), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract dated _____, 2019, between Principal and Owner for the construction activities associated with the **Sykes Creek Phase I Muck Removal Project**, the Contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the Contract.
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the Contract, then this bond is void; otherwise it remains in full force.
3. Any modifications in or under the Contract and compliance or noncompliance with any formalities connected with the Contract does not affect Surety's obligation under this bond.

Signed and sealed this ____ day of _____, 2019.

Attest:

By: _____

(As to Corporate Principal) Secretary

Name and Title of Principal

(Corporate Seal)

Witness to Principal

By: _____

Witness to Surety

Name and Title of Surety

(Corporate Seal)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as Principal in the within bond; that _____ who signed the said bond on behalf of the Principal, was then _____ of said Corporation; that I know the Principal, and the Principal's signature hereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

Secretary

(Seal)

STATE OF FLORIDA

COUNTY OF _____

Before me, a Notary Public, duly commissioned, qualified and acting, personally appeared _____ to me well known, who being by me first duly sworn upon oath, says that this individual is the Attorney-in-Fact, for the _____ and that said individual has been authorized by _____ to execute the foregoing bond on behalf of the Contractor named therein in favor of Brevard County, Florida.

Subscribed and sworn to before me this ____ day of _____, 2019, A.D.

(Attach Power of Attorney)

Notary Public
State of Florida-at-Large

My Commission Expires: _____

My Commission Number is: _____

PUBLIC CONSTRUCTION PERFORMANCE AND GUARANTEE BOND

**Sykes Creek Phase I Muck Removal Project
BID NO. B-X-XX-XX**

BY THIS BOND, We _____,
as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ (\$_____), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Performs promptly, completely and faithfully the Contract dated _____, 2019, between Principal and Owner for construction of the **Sykes Creek Phase I Muck Removal Project**, the Contract Being Attached Hereto and Made a Part of this bond by reference, in such time and without delay, and in the manner prescribed in the Contract including the delivery, execution and performance of any warranty work required by the Contract;
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the Contract;
3. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, and shall remedy any defects in the work due to faulty materials or workmanship or failure to properly maintain during the length of the Contract, and pay for all damage to other work, person, or property resulting therefrom, which shall appear within a period of one (1) year from the date of final acceptance of the work provided for in the Contract, then this bond is to be void; otherwise it remains in full force and effect.

Any modifications in or under the Contract and compliance or noncompliance with any formalities connected with the Contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 2019.

Attest:

By: _____

(As to Corporate Principal) Secretary

Name and Title of Principal

(Corporate Seal)

Witness to Principal

By: _____

Witness to Surety

Name and Title of Surety

(Corporate

Seal) CERTIFICATE AS TO CORPORATE PRINCIPAL FOR PERFORMANCE BOND

I, _____, certify that I am the Secretary of the Corporation named as Principal in the within bond; that _____ who signed the said bond on behalf of the Principal, was then _____ of said Corporation; that I know the Principal, and the Principal's signature hereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

Secretary

(Seal)

STATE OF FLORIDA

COUNTY OF _____

Before me, a Notary Public, duly commissioned, qualified and acting, personally appeared _____ to me well known, who being by me first duly sworn upon oath, says that this individual is the Attorney-in-Fact, for the _____ and that said individual has been authorized by _____ to execute the foregoing bond on behalf of the Contractor named therein in favor of Brevard County, Florida.

Subscribed and sworn to before me this ____ day of _____, 2019, A.D.

(Attach Power of Attorney)

Notary Public
State of Florida-at-Large

My Commission Expires: _____

My Commission Number is: _____

SECTION VII
PROJECT SPECIFIC GENERAL CONDITIONS

1. ABBREVIATIONS

- 1.1 References in the specifications to technical societies, organizations, or bodies are made in accordance with the following abbreviations:

AASHTO	American Association of State Highway & Transportation Officials
ACOE	Army Corps of Engineers
ACI	American Concrete Institute
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute, Inc.
ASHRAE	American Society of Heating, Refrigerating and Air-Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWSC	American Welding Society Code
AWWA	American Water Works Association
CFR	Code of Federal Regulations
CRSI	Concrete Reinforcing Steel Institute
FDEP	Florida Department of Environmental Protection
FDOT	Florida Department of Transportation
FS	Federal Specifications
IEEE	Institute of Electrical and Electronic Engineers
NBFU	National Board of Fire Underwriters
NBS	National Bureau of Standards - US Department of Commerce
NFPA	National Fire Protection Association
OSHA	Occupational Safety and Health Act
PCA	Portland Cement Association
SJRWMD	St. Johns River Water Management District
SPR	Simplified Practice Recommendations
UL	Underwriters Laboratories, Inc.

- 1.2 In the event that the complete title and abbreviation for a society, organization or body is not listed herein, references to specifications or standards of the unlisted society, organization or body will be made using the full title of the society, organization or body.

2. INTENT AND CORRELATION OF DOCUMENTS

- 2.1 The Contract Documents cover, with explicit provisions, all matters relating to the work which the Contractor undertakes to construct or perform in full compliance with such provisions. It is understood that the Contractor has, by personal examination and inquiry, been satisfied as to all local conditions and as to the meaning, requirements and reservations of the Contract Documents, for, after the

award, no deviation will be allowed from the Owner's Engineer's interpretation thereof. The intent of the Contract Documents is to include all labor, materials, supplies, appliances, equipment and other incidentals necessary or convenient to the successful completion of the work and the carrying out of all duties and obligations imposed by the Contract Documents. The Contractor shall, in addition, provide all work and materials not shown in detail but necessary for completion of the project as indicated or specified, including a proper and suitable foundation preparation, base or support and a reasonable finish consistent with adjacent work which is shown or specified. The Contractor shall make plural and complete all work which, to avoid needless repetition or for the sake of brevity, has been shown singly or partially indicated. The Contractor shall follow the Drawings and execute all work in strict accordance therewith and with the kind and quality of materials indicated and specified. Materials or work described in words which, when so applied, have a well-known technical or trade meaning shall be held to refer to such recognized standards. Any deviation from the Drawings and Specifications, which may be required by the exigencies of construction, shall in all cases conform to written instructions of the Owner's Engineer. The applicable provisions of the Contract Documents shall apply with equal force to all work, including extra work, performed under this Contract, whether performed either directly by the Contractor or by any Subcontractor. In case of discrepancy the governing order of the Contract documents shall follow the order stipulated on Section VIII, Article 2.

- 2.2 The Contract Documents are complementary, and what is called for by any, shall be as binding as if called for by all. The Contractor shall carefully study and compare all Drawings, specifications and other instructions; shall test all figures on the drawings before laying out the work; shall notify the Owner's Engineer of all errors, inconsistencies, or omissions which the Contractor may discover; and obtain specific instructions before proceeding with the work. The Contractor shall not take advantage of any apparent error or omission which may be found in the Drawings or Specifications, but the Owner's Engineer shall be entitled to make such corrections therein and interpretations thereof as the Owner's Engineer may deem necessary for the fulfillment of their intent. The Contractor shall be responsible for all errors in construction which could have been avoided by such examination and notification and shall correct at the Contractor's expense all work improperly constructed through failure to notify the Owner's Engineer and request specific instructions. In the event of inconsistencies in the requirements of either the Drawings or the Specifications, the more expensive and/or stringent will be required, and in case of conflict between the Special Conditions and General Conditions, the Special Conditions shall take precedence over General Conditions. In case of discrepancy, the governing order of the documents shall be as shown in Section VIII, Paragraph 2.2. The captions or subtitles of the several Articles and Divisions of these Contract Documents constitute no part of the context hereof, but are only labels to assist in locating and reading the provisions hereof.

- 2.3 Full size details shall take precedence over scale drawings and large scale drawings shall take precedence over small scale drawings. Computed dimensions shall take precedence over scaled dimensions.
- 2.4 When measurements are affected by conditions already established or where items are to be fitted into constructed conditions, it shall be the Contractor's responsibility to verify all such dimensions at the site and the actual job dimensions shall take precedence over scale and figure dimensions on the Drawings.
- 2.5 Wherever a stock size of manufactured item or piece of equipment is specified by its nominal size, it shall be the responsibility of the Contractor to determine the actual space requirements for setting and for entrance to the setting space to make all necessary allowances and adjustments therefore in the work without additional cost to the Owner.
- 2.6 Unless otherwise stated, standard specifications or other specifications of the organizations, societies or bodies referred to herein, or to specifications listed therein, shall be to their current editions, and whenever it is stated in the Specifications that materials or work shall conform to the requirements of any of these specifications, work and/or material shall also conform to any other specification referred to therein.

3. NOTICE AND SERVICE

- 3.1 All notices, demands, requests, instructions, approvals and claims shall be in writing.
- 3.2 Any notice to or demand upon the Contractor shall be sufficiently given if delivered to such office of the Contractor specified in the Proposal (or to such other office as the Contractor may from time to time designate to the Owner's Engineer in writing), or if deposited in the United States mail in a sealed, postage prepaid envelope, or if delivered with charges prepaid to any telegraph company for transmission, in each case addressed to such office.
- 3.3 All notices or other papers required to be delivered by the Contractor to the Owner, or to any of its representatives shall, unless otherwise specified in writing to the Contractor, be delivered to the office as indicated in the Contract Documents, and any other notice or demand upon the Owner shall be sufficiently given if delivered to such office, or if deposited in the United States mail in a sealed, postage prepaid envelope, or if delivered, with the charges prepaid to any telegraph company for transmission, in each case addressed to such office (or to such other representative of the Owner or to such other address as the Owner may subsequently specify in writing to the Contractor for such purpose).
- 3.4 Any such notice or demand shall be deemed to have been given or made as of the time of actual delivery, or, in the case of mailing, when the same should have

been received in due course of posts, or in the case of telegrams, at the time of actual receipt thereof.

4. COPIES FURNISHED

- 4.1 The Contractor will be supplied with five copies of the Drawings and Specifications. Additional copies which may be needed by the Contractor will be furnished at the cost of printing. One complete set of Drawings and Specifications shall be kept on the job by the Contractor and shall be accessible at all times.

5. SHOP DRAWINGS

- 5.1 The Contractor shall submit with such promptness as to cause no delay in the work, all shop or setting drawings and schedules required for the work of the various trades. Before submitting shop drawings, the Contractor shall check all drawings for accuracy, correlate them, and make necessary corrections in green pencil. The Contractor shall indicate review of these drawings by appropriate stamp denoting the Contractor's approval. Shop drawings submitted to the Owner's Engineer without this stamp will be returned without action. After the Contractor's review, the Contractor shall submit a maximum of five (5) sets of shop drawing prints to the Owner's Engineer for approval.
- 5.2 Shop drawings shall be dated and identified by project name, and shall indicate descriptive names of equipment, type and class of materials, item numbers, reference to Owner's Engineer's drawings, specification reference, and location at which materials or equipment are to be installed in the work. Shop drawings shall be folded to fit in letter size files with the title exposed on the outside fold.
- 5.3 Shop drawings shall be submitted with duplicate transmittal letters containing project name, Contractor's name, number of drawings and other pertinent data. Shop drawings and submittal of data will be reviewed two times; thereafter, all further review time will be charged to the Contractor at a rate of \$100 per hour, which shall not be back charged to the Owner.
- 5.4 The Owner's Engineer shall review any necessary shop drawings with reasonable promptness (a maximum of 14 days), making desired corrections. The Owner's Engineer's approval of such drawings or schedules will not include verification of dimensions or quantities, nor shall it relieve the Contractor from responsibility for deviations from drawings and/or specifications unless the Contractor has, in writing, called the Owner's Engineer's attention to such deviations at the time of submission; nor shall it relieve the Contractor from responsibility for errors of any sort in shop drawings or schedules or proper correlation with other work. The Contractor shall make any corrections required by the Owner's Engineer and file with the Owner's Engineer the specified number of corrected copies.
- 5.5 Additional shop drawings are required if specified by the Owner's Engineer at the Preconstruction conference.

6. OWNERSHIP OF DRAWINGS

6.1 All Specifications, Drawings, other Contract Documents and copies thereof furnished by the Owner's Engineer shall remain the property of the Owner. They shall not be used on another project unless such use is authorized by the Owner and, with the exception of those sets which have been signed in connection with the execution of the Agreement, shall be returned to the Owner upon completion of the project.

7. SAMPLES

7.1 The Contractor shall furnish to the Owner for approval all samples of materials as directed. The work shall then be in accordance with approved samples.

8. MATERIALS, APPLIANCES, EMPLOYEES

8.1 Unless otherwise stipulated, the Contractor shall provide and pay for all materials, supplies, labor, water, tools, equipment, light, power, transportation and other facilities necessary for expeditious execution and completion of the work in an acceptable manner. Unless otherwise definitely specified, it is a general requirement of the specifications that all materials and workmanship shall meet the requirements of the applicable standard specifications of the American Society for Testing and Materials or of the Federal Standardization Documents as minimum requirements.

8.2 The Contractor shall at all times enforce strict discipline and good order among all employees, and shall not employ on the work site any unfit person or anyone not skilled in the work assigned. Anyone whose work is unsatisfactory to the Owner or the Owner's Engineer or who are considered by the Owner or the Owner's Engineer as careless, incompetent, unskilled or disorderly, who use threatening or abusive language to any person having supervision of the work site, or who are otherwise objectionable, shall be dismissed from the work site upon notice from the Owner and shall not be employed on the work site thereafter. No alcoholic beverage shall be allowed on the work site.

8.3 All labor described in these specifications or indicated on the drawings and the work specified or indicated, shall be executed in a thoroughly substantial and workmanlike manner and by mechanics skilled in the applicable trade. All materials, fixtures and apparatus shall be installed in an undamaged condition.

8.4 Except as otherwise specified, all materials, fixtures and apparatus shall be new and of good quality and shall be delivered to the site of the work in an undamaged condition and shall be properly stored and secured by the Contractor to maintain them in an undamaged condition. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

- 8.5 Whenever materials are sold by the manufacturer in sealed packages, they shall be so delivered on the job and maintained until their use.
- 8.6 The Contractor shall make written request to the Owner's Engineer for, and obtain the Owner's Engineer's written approval of, the use of any material proposed for use when "approved" materials are specified without mentioning any standard by name.
- 8.7 All written requests for approval of materials shall be made within fifteen (15) days after the Contract is signed and before ordering any materials requiring such approval.
- 8.8 If any materials specified shall no longer be available during the progress of the work, or if the quality of the material no longer meets with satisfactory approval of the Owner, the Owner's Engineer shall specify an equal which will be satisfactory to the Owner's Engineer, with the Owner's approval. Resultant cost modifications, if any, shall be as provided for modifications in the work, by written change order.
- 8.9 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier with the addition of such expressions as "or equal" or "or approved equal", the naming of the item is intended to establish the type, function and quality required. When "or equal" or "or approved equal" is used, materials or equipment of other suppliers may be accepted by the Owner's Engineer if sufficient information is submitted by the Contractor to allow the Owner's Engineer to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by the Owner's Engineer will include the following as may be supplemented in the Specifications. Requests for review of substitute items of material and equipment will not be accepted by the Owner's Engineer from anyone other than the Contractor. If the Contractor wishes to furnish or use a substitute item of material or equipment, the Contractor shall make written application to the Owner's Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice the Contractor's achievement of Contract completion on time, whether or not acceptance of the substitute for use in the work will require a change in any of the Contract Documents (or in the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting

modification, all of which shall be considered by the Owner's Engineer in evaluating the proposed substitute. The Owner's Engineer may require the Contractor to furnish at the Contractor's expense additional data about the proposed substitute.

8.10 The Owner's Engineer will be allowed a reasonable time within which to evaluate each proposed substitute. The Owner's Engineer and Owner will be the sole judges of acceptability, and no substitute will be ordered, installed or utilized without the Owner's Engineer's or Owner's prior written acceptance which will be evidenced by either a Contract modification or an approved Shop Drawing. It is distinctly understood that, (1) the Owner's Engineer's sole judgment is to be utilized in determining whether or not any article, material or item proposed to be substituted is the equal of any article, material or item so specified; (2) the decision of the Owner or Owner's Engineer on all such questions of equality shall be final and binding upon the Contractor and (3) in event of any adverse decision made by the Owner's Engineer, no claim of any sort by the Contractor shall be made or allowed against the Owner's Engineer or Owner. The Owner may require the Contractor to furnish, at the Contractor's expense, a special performance guarantee or other surety with respect to any substitute. The Owner's Engineer will record time required by the Owner's Engineer and their sub-consultants in evaluating substitutions proposed by the Contractor and in making modifications in the Contract Documents occasioned thereby. Whether or not the Owner's Engineer accepts a proposed substitute, the Contractor shall reimburse the Owner for the charges of the Owner's Engineer and their sub-consultants for evaluating each proposed substitute. Where trade names are specified without the phrase "or equal", or "or approved equal", or where alternate trade names are specified without the phrase "or equal" or "or approved equal", or where alternate trade names are specified without the phrase "or equal" or "or approved equal", such products are hereby approved for quality and no substitution will be permitted.

8.11 Materials and equipment shall be so placed as to cause a minimum of inconvenience to other contractors on the work and to the public and to insure protection against deterioration of any kind. The storage piles shall be periodically removed to maintain site safety and community aesthetics.

8.12 The Contractor shall be responsible for determining and confining his own storage and spoil material handling areas. The Contractor will be responsible for coordinating any water and electrical connection and associated costs. In addition, the Contractor shall provide his own site security.

9. SALES TAX AND EXCISE TAX

9.1 All sales tax and excise taxes shall be paid by the Contractor, except as otherwise provided in these Contract Documents. The County of Brevard is exempt from Federal excise taxes and all sales taxes.

10. SUPERVISION AND RESPONSIBILITY OF THE CONTRACTOR

- 10.1 The supervision of the execution of this Contract is vested wholly in the Contractor. The orders, instructions, directions, or requests of the Owner are to be given through the Owner's Engineer or the Owner's Designee. The Contractor shall designate a representative to receive such instructions, directions or requests in the Contractor's absence, and failing to do so, will be held responsible for the execution of them
- 10.2 The Contractor shall give the work the constant attention necessary to facilitate the progress thereof and shall cooperate with the Owner's Engineer, Owner's Designee, and with other contractors in every way possible. The Contractor shall at all times have a competent superintendent, capable of reading and thoroughly understanding the drawings and specifications, as the Contractor's agent on the work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the work. Such superintendent shall be furnished irrespective of the work sublet.
- 10.3 The Contractor shall designate the superintendent on the job to the Owner and the Owner's Engineer in writing immediately after receipt of the notice to proceed. The parties understand and agree that the superintendent's physical presence is indispensable to the successful completion of the work in a good and workmanlike manner. If the superintendent is absent from the job site, the Owner's Engineer or Owner's Designee may deliver written notice to the Contractor and all work on the job of the Contractor and its Subcontractors shall immediately cease.
- 10.4 If the project requires construction of or work inside of confined spaces, then the Contractor shall assign personnel who have successfully completed training programs and are certified by the National Utility Contractors Association, as a Competent Person, Confined Space Coordinator, who shall be present at all times during construction.
- 10.5 The Contractor shall be solely and wholly responsible for delivering the completed work in a good and workmanlike condition and for the good condition of the work and materials until final acceptance and formal release from the obligations. The Contractor shall bear all losses resulting on account of the weather, fire, the elements, or other causes of every kind or nature.
- 10.6 The Contractor shall provide and maintain at the Contractor's expense, in a sanitary condition, such accommodations for the use of the Contractor's employees as are necessary to comply with the requirements and regulations of the State Department of Health and Rehabilitative Services or the County Health Department. The Contractor shall commit no public nuisance. The Sanitary Facilities shall be placed at least 500-feet from the nearest potable water well. The Sanitary Facilities must also be placed so that they do not obstruct any drainage structures or pose a risk of an illicit discharge into any stormwater system. Toilets shall have incorporated therein approved metal or plastic

containers which shall be tightly closed and all waste shall be transported away from the site of the work and disposed of properly.

11. PRE-CONSTRUCTION CONFERENCE

- 11.1 Before starting the work, a pre-construction conference, will be held to review the schedule, other submittals detailed in the Technical Specifications, permit conditions and to establish a working understanding between the Parties as to the Project. Present at the conference will be the Owner's Designee(s), Owner's Engineer, the Resident Construction Monitor, the Contractor and the Superintendent, subcontractors and suppliers of major items of work, and/or other concerned parties familiar with the work and authorized to conclude matters relating to the work, or as requested by the Owner.
- 11.2 Items to be discussed at the pre-construction conference include but are not limited to:
- a) Construction Progress Schedule
 - b) Critical Work Sequencing
 - c) Designation of Responsible personnel
 - d) Procedures for processing field decisions and Change Orders
 - e) Procedures for processing Pay Applications
 - f) Electronic Drawing Files – Provided to Contractor
 - g) Submittal of Shop Drawings
 - h) Maintenance of Traffic
 - i) Contractors Dredging and Dredge Material Management Plan
 - j) Office, Work and Storage Areas
 - k) Safety Procedures
 - l) Housekeeping
 - m) Working Hours

12. PROTECTION OF PRIVATE PROPERTY AND THE PUBLIC

- 12.1 The Contractor shall continuously maintain adequate protection of all work from damage and shall protect public and private property from injury or loss arising in connection with this Contract. The Contractor shall make redress for any such damage, injury or loss. The Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.
- 12.2 It shall be incumbent upon the Contractor to protect private property. Private property outside the limits of construction that are disturbed by construction shall be restored by the Contractor to its original condition at the Contractor's expense. There shall be no extra pay for this work and the anticipated cost of the work must be included in the Contract price.

- 12.3 Any property outside the limits of construction such as pavements, curbs, sidewalks, pipes or utilities, footings, or structures, trees and shrubbery, not indicated on the plans or noted on the specifications as being altered or removed by construction, shall be protected or if disturbed, shall be restored by the Contractor, at the Contractor's expense, to a condition equal to, or better than that existing at the time of Award of Contract. There shall be no extra pay for this work and the anticipated cost of the work must be included in the Contract price.
- 12.4 The Contractor shall take all necessary precautions for the safety of employees on the work, and shall comply with all applicable provisions of Federal, State, and local safety laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and Amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed.
- 12.5 The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards, including sufficient lights, buoys, markers and danger signals on or near the work, from sunset to sunrise; the Contractor shall erect suitable railings, barricades, or other protective devices about unfinished work, open trenches, embankments, or other hazards and obstructions to traffic; the Contractor shall provide all necessary watchmen on the work by day or by night for the safety of the public; and the Contractor shall take all necessary precautions to prevent accidents and injuries to persons or property in or about the work. This shall be accomplished in accordance with the Technical Specifications.
- 12.6 In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor shall act promptly at the Contractor's discretion to prevent such threatened loss or injury, and shall so act, without appeal if so instructed or authorized. Any compensation claimed by the Contractor on account of emergency work shall be determined by the Owner's Engineer.
- 12.7 The Contractor shall in every respect be responsible for, and shall replace and make good all loss, injury, or damage to the premises (including landscaping, walks, docks, seawalls, structures) on the premises and property of owners of any land adjoining, which may be caused by the Contractor or the Contractor's employees, agents, subcontractors, etc., or which the Contractor or they might have prevented. The Contractor shall, at all times while the work is in progress, use extraordinary care to see that adjacent buildings are not endangered in any way by reason of fire, water, vibration or construction operations, and to this end shall take such steps as may be necessary or directed, to protect the property there from; the same care shall be exercised by all Contractor's and Subcontractor's employees.
- 12.8 Buildings, sidewalks, fences, docks, seawalls, shade trees, lawns and all other improvements shall be duly protected from damage by the Contractor. Property

obstructions, such as sewers, drains, water or gas pipes, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced if avoidable. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street monuments, etc., prior to adjusting them to grade and shall be held strictly liable to the affected utility if any such appliances are disturbed, damaged or covered up during the course of the work.

- 12.9 The Contractor shall maintain satisfactory access to all adjacent properties at all times during the project.

13. INSURANCE

- 13.1 The Contractor shall provide and maintain during the life of this Contract "Worker's Compensation Insurance" as required by Florida Statute, or Longshore and Harbor Workers' Compensation Act or Jones Act, whichever is applicable for the class of employees working on the project, for all of the Contractor's employees and, in case any work is sublet, the Contractor shall require each Subcontractor similarly to provide "Worker's Compensation Insurance" as required by Florida Statute, or Longshore and Harbor Workers' Compensation Act or Jones Act, whichever is applicable for the class of employees working on the project, for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. This coverage must include Employer's Liability with a limit of at least \$1,000,000 for each accident.
- 13.2 The Contractor shall indemnify and save harmless to the limit allowed by law, the Owner and the Owner's Engineer and their agents, and employees from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expenses (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The obligation of the Contractor under this Article shall not extend to the liability of the Owner's Engineer and their agents or employees arising out of errors or omissions in maps, drawings, opinions, reports, surveys, contract modifications, designs or specifications which have been prepared by the Owner's Engineer. The Contractor agrees that \$1,000 shall be included as specific consideration for this indemnification in the bid price for the work covered by this Contract.
- 13.3 Insurance shall be provided and maintained with a combined single limit of \$1,000,000 for each occurrence in each of these policies with the Owner and Owner's Engineer named as additional insured as follows:

- a) Comprehensive General Liability Insurance, including Products and/or Completed Operations, Explosion Hazard, Collapse Hazard, and Underground Property Damage Hazard, Contractual Liability under this Contract.
 - b) Comprehensive Auto Liability Insurance covering any auto, including owned, non-owned and hired vehicles
 - c) Pollution Liability Insurance.
- 13.4 In and all claims against the Owner or the Owner's Engineer or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Workmen's Compensation Acts, Disability Benefit Acts or other employee benefit acts.
- 13.5 Before starting the work, the Contractor will file with the Owner and the Owner's Engineer certificates of such insurance, acceptable to the Owner. These certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least 30 days prior written notice has been given to the Owner and the Owner's Engineer.

14. AUTHORITY OF ENGINEER

- 14.1 The supervision of the execution of this Contract is vested wholly in the Contractor. The orders, instructions, directions, or requests of the Owner are to be given through the Owner's Engineer or the Owner's Designee. The Contractor shall designate a representative to receive such instructions, directions or requests in the Contractor's absence, and failing to do so, will be held responsible for the execution of them.
- 14.2 The Owner, through the Owner's Engineer or Owner's Designee, and acting upon the Owner's Engineer's advice, shall have the authority to suspend the work wholly or in part for such period or periods as may be deemed necessary due to failure on the part of the Contractor to carry out orders given to perform any or all provisions of the Contract. The Contractor shall not suspend the work and shall not remove any equipment, tools, lumber or other materials without the written permission of the Owner's Engineer or the Owner's Designee.
- 14.3 The Owner's Engineer and the Owner's Designee will have authority to disapprove or reject work which the Owner's Engineer reasonably believes to be defective, and under such circumstances will also have authority to require special

inspection or testing of the work at the Contractor's expense, whether or not the work is fabricated, installed or completed.

- 14.4 The Engineer is a representative of the Owner. Any instructions, advice, or recommendations which the Owner's Engineer may give the Contractor are given in the name of the Owner and by the Owner's authority and consent. However, the Owner's Engineer shall not supplant the Contractor in the Contractor's conduct, direction and supervision of the work, unless specifically directed to do so by the Owner, in writing, under appropriate terms of the Contract Documents. All modifications and instructions of the Owner to the Contractor shall be given through the Owner's Engineer, if so directed by the Owner. The Owner may have the option to communicate directly with the Contractor at any given time during the course of the work. It is recognized that the Contractor is wholly and solely responsible for delivery to the Owner of the completed work in a good, safe and workmanlike condition.

15. OBSERVATION OF THE WORK

- 15.1 The Owner and the Owner's Engineer shall have free access to the materials and the work at all times for measuring or observing the same, and the Contractor shall afford all necessary facilities and assistance for so doing.
- 15.2 After written authorization to proceed with the work, the Owner's Designee and the Owner's Engineer will:
- a) Make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine, if the work is proceeding in accordance with the Contract Documents; the Owner's Engineer will not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the work. The Owner's Engineer will not be responsible for the construction means, methods, procedures, techniques and sequences, nor for the Contractor's failure to perform the construction work in accordance with the Contract Documents. The Owner's Engineer will not be responsible for safety precautions and procedures in connection with the work; and during such visits, based on on-site observations as an experienced and qualified design professional, the Owner's Engineer will keep the Owner informed of the progress of the work, and will endeavor to guard the Owner against defects and deficiencies in the Contractor's work and may disapprove work as failing to conform to the Contract.
 - b) Check and approve or disapprove samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of materials and equipment and other data which the Contractor is required to submit, only for conformance with the design concept of the project and compliance with the information given by the Contract Documents, and assemble written guarantees which are required by the Contract Documents.

- c) Consult and advise with the Owner, act as the Owners' representative at the project site, issue all instructions of the Owner to the Contractor and prepare routine Contract modifications as required.
- d) Based on on-site observations as an experienced and qualified design professional and on review of the Contractor's applications for payment, determine the amount owing to the Contractor, and approve in writing payment to the Contractors in such amounts; such approvals of payment to constitute a representation to the Owner, based on such observations and review of the data comprising such applications, that the work has progressed to the point indicated and that, to the best of the Owner's Engineer's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents, subject to the results of any subsequent test called for in the Contract Documents and any qualifications stated in the Owner's Engineer's approval. Such partial and final payments will be as specified elsewhere herein except as modified in this Paragraph.
- e) Conduct, in company with the Owner, a final inspection of the project for conformance with the design concept of the project and compliance with the information given in Contract Documents, and approve in writing final payment to Contractor.

16. EXAMINATION OF THE WORK

- 16.1 The authority and duties of the Resident Construction Monitor, who may be an employee of the Owner or the Owner's Engineer, are limited to examining the material furnished, observing the work done and reporting their findings to the Owner and Owner's Engineer. The Owner's Engineer does not underwrite, guarantee or insure the work done by the Contractor. It is the Contractor's responsibility to perform the work in all details in accordance with the Contract Documents, and the Owner's Engineer shall never be responsible or liable to either the Owner or the Contractor or any other party by reason of the Contractor's failure to do so. Failure by the Owner's Engineer or by any Resident Construction Monitor or other representative of the Owner engaged in on-the-site observation to discover defects or deficiencies in the work of the Contractor shall never, under any circumstances, relieve the Contractor from the Contractor's liability there for to the Owner, or subject the Owner's Engineer to any liability to the Owner, the Contractor, or any other party for any such defect or deficiency. The Contractor shall notify the Resident Construction Monitor 48 hours in advance of readiness for any inspections. The Resident Construction Monitor will call the Owner's Engineer and schedule the inspection as necessary.
- 16.2 Resident Construction Monitors shall have no authority to permit deviation from or to modify any of the provisions of the Drawings or Specifications without the written permission or instruction of the Owner's Engineer.

- 16.3 The Owner's Engineer, representatives, employees, or any Resident Construction Monitor in the employment of the Owner will not have authority to supervise, direct, expedite or otherwise control and instruct, or order the Contractor or the Contractor's employees in the fulfillment of the Contractors' obligation. The Owner's instructions, orders, directions and/or orders to the Contractor shall be given only through the Owner, or the Owner's employees. The Owner's Engineer may only advise the Contractor when it appears to the Owner's Engineer that the work and/or materials do not conform to the requirements of the Contract Documents, including the Drawings and Specifications.
- 16.4 The payment of any compensation, irrespective of its character or form, or the giving of any gratuity, or the granting of any valuable favor, directly or indirectly, by the Contractor to any project representative, or any other Brevard County employee, is strictly prohibited, and any such act on the part of the Contractor will constitute a violation of the Contract.
- 19.5 If the Contract Documents, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any work to specifically be inspected, tested, or approved by someone other than the Contractor, the Contractor will give the Resident Construction Monitor 48 hours' notice of readiness therefore. The Contractor will furnish the Resident Construction Monitor and Owner's Engineer the required certificates of inspection, testing or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials, or such other applicable organization as may be required by law or the Contract Documents. If any such work required so to be inspected, tested or approved is covered without written approval of the Resident Construction Monitor, it must, if requested by the Resident Construction Monitor, be uncovered for observation at the Contractor's expense. The cost of all such inspections, tests and approvals shall be borne by the Contractor unless otherwise provided.
- 19.6 If the Contractor desires to carry on work outside the regular hours or on Saturdays, Sundays or holidays, the Contractor shall submit a request in writing to the Owner or the Owner's Engineer in charge and shall allow ample time to enable satisfactory arrangements to be made.

17. DEFECTIVE WORK

- 17.1 If defects are found in the Work before final acceptance, the Contractor shall promptly correct such defects and remove and dispose of all defective or unsatisfactory work or materials, although the defects may have been overlooked by the Owner's Engineer or the Owner's employees, or may have been the result of damage from any cause.
- 17.2 Should the Contractor fail or refuse to remove and renew any defective work performed, or to make any necessary repairs in an acceptable manner, and in accordance with the requirements of the Contract within the time indicated in

writing, the Owner's Engineer shall, under these conditions, after securing the Owner's concurrence, cause the unacceptable or defective work to be removed or renewed, or such repairs as may be necessary to be made at the Contractor's expense. Any expense incurred by the Owner in making these removals, renewals or repairs, which the Contractor has failed or refused to make, shall be paid for out of any monies due or which may become due the Contractor, or shall be assumed by the Surety. Continued failure or refusal on the part of the Contractor to make any or all necessary repairs promptly, fully and in an acceptable manner, shall be sufficient cause for the Owner to declare the Contract in default, in which case the Owner at its option may contract with any other individual, firm or corporation to perform the work.

- 17.3 All costs and expenses incurred by the Owner due to the default of the Contractor shall be charged against the defaulting Contractor, and the amount thereof deducted from any monies due, or which may become due, or shall be charged against the Performance Bond. Any special work performed, as described herein, shall not relieve the Contractor in any way from the Contractor's responsibility for the work.

18. ALTERATIONS OR MODIFICATIONS IN DRAWINGS & SPECIFICATIONS

- 18.1 The right is reserved for the Owner or the Owner's Engineer to make without notice to the Surety from time to time, such alterations in the Drawings or in the character of the work as the Owner's Engineer may consider necessary or desirable to complete the proposed work to the Owner's Engineer's satisfaction and consistent with the general intention of the Contract Documents, subject to the approval of the Owner. Notice of every such alteration or modification shall be given in writing to the Contractor, and no such alteration or modification shall be considered as constituting a waiver of any of the provisions of the Contract Documents, or as nullifying or invalidating any such provisions. Should any such alteration or modification result in an increase or decrease in the quantity or the cost of the work or materials described in the Proposal, the total amount payable under the Contract will be accordingly modified through the use of a written Change Order request. If alterations or modifications are thus made, the time for completion of the Contract will be correspondingly modified, if the Contractor so requests, before commencing the work attributable to such alterations or modifications.

19. EXTRA WORK

- 19.1 The Contractor shall do all extra work that may be ordered in writing by the Owner or the Owner's Engineer acting on the specific authority of the Owner arising out of the modification of the Specifications or Drawings made or approved by the Owner. For this work, the Contractor shall be paid at the rates named in the Contract for work of a similar nature and character. If the extra work be of a class for which no rate is fixed in the Contract, the actual reasonable cost as determined by the Owner's Engineer, plus fifteen percent of said cost for

profit and general expense shall be paid the Contractor. No claim for extra work shall be allowed unless the same was ordered in writing

- 19.2 The compensation herein provided shall be received and accepted by the Contractor as payment in full for all extra work done.
- 19.3 The Contractor's representative and the Owner's Resident Construction Monitor shall compare records of extra work done at the end of each day. Such records shall be made in triplicate upon a form provided for such purpose by the Owner's Engineer and shall be signed by both the representatives referred to herein, one copy being submitted to the Owner's Engineer, a second copy being submitted to the Owner, and the third copy being retained by the Contractor.
- 19.4 All extra work shall be done in compliance with Article 4-3 of FDOT Standard Specifications, Latest Edition. Contractor shall provide written notification of any differing site conditions within 24-hours of becoming aware of such condition.
- 19.5 Where extra work is performed by a subcontractor, the Contractor is limited to a total of 15% of the subcontractor charges as overhead, profit, insurance, bonding, etc.

20. DISPUTE RESOLUTION

- 20.1
 - a) Within three (3) days after denial of a Contractor's change order or Contract modification request in an amount, individually or in total, less than the authorized purchasing level approved for the County Manager by the County Commission (currently at \$100,000) the Contractor may submit to the County Manager or a designee with experience in the oversight of construction projects for a department or business other than the department responsible for monitoring the disputed request, documentation of the Contractor's position in the dispute or disagreement. The County Manager or designee, within five (5) days after the receipt of the Contractor's documentation, shall review the request and make a final determination as to whether denial was arbitrary or capricious based upon the sufficiency of the work under the terms of the Contract, applicable regulations and relevant construction standards. Based upon the sufficiency and degree of completion, as well as any defects in the work and the amount reasonably required, if any, to correct or repair defective work, the reviewer shall make the final determination as to whether a written change order or Contract modification should be approved by the County Manager.
 - b) If the denied request or disputed amount exceeds the County Manager's purchasing authority, the County Manager shall present a report, recommendation and the Contractor's claim and documentation, to the County Commission for a final determination within thirty (30) days after receiving the Contractor's documentation for the claim. The Commission shall make its decision using the standards specified in subparagraph (a) above.

- 20.2 Within thirty (30) days after denial of a request for a change order or Contract modification by the project manager or engineer involving 1) an amount in excess of the County Manager's expenditure authority or 2) for the amount the Contractor claims to be due at the time the project is ready for beneficial use or occupation, the County may, at the County's option in lieu of the procedure specified in Paragraph 20.1, submit the dispute to a mediator with knowledge or experience in construction management, as agreed upon by the parties. Upon referral to a mediator, the Owner and Contractor shall each pay half the estimated cost of the mediator, up front. Within fifteen (15) days after the date of submittal, the mediator, applying the standards set forth in Paragraph 20.1, shall investigate the dispute and submit a written recommendation for disposition of the dispute to the County Manager or a designee with the qualifications specified in Paragraph 20.1. Within fifteen (15) days after receiving the mediator's recommendation, the County Manager shall submit the recommendation to the County Commission, along with a staff report analyzing the dispute and mediator's recommendation. Based on the standards set forth in Paragraph 20.1 above, the Commission shall decide whether to grant or deny, in whole or in part, the amounts recommended by the mediator. The Commission's decision will be deemed final action on the disputed claim for the purposes of ripening the decision for judicial review. If the mediator recommends that no change order or Contract modification be granted, the Contractor shall reimburse the County for any amounts paid by the County to the mediator.
- 20.3 The deadlines for completing the dispute process described in Paragraphs 20.1 and 20.2 may be extended by mutual agreement of the Contractor and the County.

21. FAILURE TO PERFORM WORK

- 21.1 At Owner's option if the Contractor shall fails to begin the work called for by the Contract within the time specified in the Notice to Proceed, or fails to perform the work continuously with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the work within the prescribed time, or shall perform the work unsatisfactorily, or shall neglect or refuse to remove materials or to perform such work as shall be rejected as defective and unsuitable, or shall discontinue the prosecution of the work, or shall become insolvent, or be declared bankrupt, or shall 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, the Owner may give notice in writing to the Contractor and to the Surety of such delay, neglect, or other default, specifying the conditions pertaining thereto and directing the Contractor to cure the same.
- 21.2 If the Contractor shall not cure such conditions within five (5) calendar days after receipt of such notice, the Owner shall, upon written report from the Owner's Engineer reciting the facts of such delay, neglect or default, have full power and authority, without violating the Contract, to take the prosecution of the work out of the hands of the Contractor, to appropriate or use any or all materials and

equipment on the grounds as may be suitable and acceptable, to enter into an agreement with another Contractor for the completion of the work or to use such other methods as, in the opinion of the Owner, shall be required for the completion of the work in an acceptable manner.

- 21.3 All costs and charges incurred by the Owner together with the costs of completing the work under the Contract shall be deducted from any monies due or which may become due. In the event that the expense so incurred by the Owner shall be less than the sum which would have been payable under the Contract if the work had been completed by the Contractor, the Contractor shall be entitled to receive the difference; in case such expense shall exceed the sum which would have been payable under the Contract, the Contractor and the Surety shall be liable and shall pay to the Owner the amount of such excess.

22. TERMINATION

- 22.1 In the event the Owner does not choose the notice and possible cure option in Article 21 above, the performance of work under this Contract may be terminated by the Owner in accordance with this clause in whole, or in part from time to time, whenever the Owner shall determine that such termination is necessary. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective
- 22.2 After receipt of a Notice of Termination, and except as otherwise directed by the Owner or the Owner's Engineer, the Contractor shall:
- a) Stop work under this Contract on the date and to the extent specified in the Notice of Termination.
 - b) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this Contract as is not terminated.
 - c) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
 - d) Assign to the Owner, in a manner, at the times, and to the extent directed by the Owner's Engineer, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner shall have the right, in the Owner's discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - e) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of

the Owner to the extent the Owner may require, which approval or ratification shall be final for all the purposes of this clause.

- f) Transfer title and deliver to the Owner, in the manner, at the times, and to the extent, if any directed by the Owner's Engineer, the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination.
- g) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.
- h) Take action as may be necessary or as the Owner may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

22.3 After receipt of a Notice of Termination, the Contractor shall submit to the Owner the Contractor's termination claim, in the form and with the certification prescribed by the Owner or the Owner's Engineer. Such claim shall be submitted promptly, but in no event later than one month from the effective date of termination unless one or more extensions in writing are granted by the Owner. No claim will be allowed for machinery and equipment rental expense incurred after the effective date of Notice of Termination. Upon failure of the Contractor to submit a termination claim within the time allowed, the Owner or the Owner's Engineer shall determine, on the basis of information available to the Owner or the Owner's Engineer, the amount, if any, due to the Contractor by reason of the termination and shall thereupon advise the Owner the amount so determined.

22.4 The Contractor and the Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed upon amount or amounts, exclusive of settlement costs shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly and the Contractor shall be paid the agreed amount. Nothing in this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this Paragraph.

22.5 In the event of the failure of the Contractor and the Owner to agree as provided in the preceding Paragraph on the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, the Owner or the Owner's Engineer shall determine, on the basis of information available to the

Owner or the Owner's Engineer, with respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of the cost of such work and a sum, as a profit, equal to two percent (2%) of said cost of the work, which represents the cost of articles or materials delivered to the site, but not incorporated in the work and in place on the effective date of the Notice of Termination, plus a sum equal to eight percent (8%) of the remainder to such amount, but the aggregate of such sums shall not exceed six percent (6%) of the whole of the amount determined above; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this Paragraph and an approximate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.

- 22.6 The total sum to be paid to the Contractor shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor the fair value, as determined by the Owner's Engineer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Owner.
- 22.7 In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other payment on account theretofore made to the Contractor, applicable to the terminated portion of this Contract, (2) any claim which the Owner may have against the Contractor in connection with this Contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Owner.

23. ASSIGNMENT OF CONTRACT

- 23.1 No assignment by the Contractor of this Contract or of any part thereof, or any monies due, or to become due there under shall be made without the prior approval of the Owner, which approval will be given only after the Surety on the Performance and Payment Bonds has informed the Owner in writing that it has no objection to such assignment being made.
- 23.2 In the event that the Contractor shall undertake to assign all or any part of any monies due, or to become due, under this Contract, the instrument of assignment shall contain a provision substantially to the effect that it is agreed that the rights of the assignee in and to any of such monies shall be subject to the prior liens of all persons for services rendered or materials supplied for the performance of all work embraced by this Contract.

- 23.3 The conditions and requirements of subletting and assigning of Contracts contained in Article 8-1 of the FDOT Standard Specifications shall apply to this Contract.

24. SUBCONTRACTORS

- 24.1 The Contractor may utilize the services of specialty subcontractors on those parts of the work which under normal contracting practices are performed by such specialty subcontractors.
- 24.2 The Contractor shall not award any work to any subcontractor without prior written approval of the Owner. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's subcontractors, and of persons either directly or indirectly employed by them, as the Contractor is for the acts and omissions of persons directly employed by the Contractor. Nothing contained in the Contract Documents shall create any contractual relations between any subcontractor and the Owner.
- 24.3 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of subcontractors, and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.

25. SEPARATE CONTRACTS

- 25.1 The Owner reserves the right to let other contracts in connection with this project. The Contractor shall afford other contractors a reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the Contractor's work with theirs.
- 25.2 If any part of the Contractor's work depends on proper execution or results upon the work of any other contractor, the Contractor shall examine and promptly report to the Owner and Owner's Engineer any defects in such work that renders it unsuitable for such proper execution and results. The Contractor's failure to so inspect and report shall constitute the Contractor's acceptance, at the Contractor's own risk, of the other contractor's work as fit and proper for the reception of the Contractor's work, except as to defects which may develop in the other contractor's work after the execution of the work under this Contract.
- 25.3 To ensure the proper execution of the Contractor's subsequent work, the Contractor shall measure work already in place and shall at once report to the Owner and Owner's Engineer any discrepancy between the executed work and the Drawings.

- 25.4 The Contractor may contract separately and perform additional work for property owners within the project limits but the County accepts no liability for this additional work. Additional work accepted by the Contractor shall not affect the Project completion schedule.

26. DISTRIBUTION OF WORK

- 26.1 The arrangement of the Specifications in sections, under general titles descriptive of the principal materials or trades covered, is for convenience. This subdivision follows trade practice as far as seems practical without unreasonably complicated or minute breakdown. Under many divisions it has seemed proper to include items of other trades or types of materials, the use or the installation of which is closely related to the principal subject of that division. Such arrangement shall not operate to make the Owner's Engineer an arbitrator to establish subcontract limits between Contractor and Subcontractor.
- 26.2 The Contractor and all Subcontractors shall study the Drawings and Specifications in sufficient detail to assure that all required items are included. It shall be the Contractor's responsibility to so arrange and distribute the work that all required items are provided by the proper trades and at the proper times, without controversy as to contract obligation, or as to jurisdiction, and the Contractor shall make all necessary adjustments to this end.

27. NO WAIVER OF LEGAL RIGHTS

- 27.1 Observation by the Owner's Engineer, Resident Construction Monitor, or by any duly authorized representatives, any measurement or report by the Owner's Engineer, any order by the Owner for the payment of money, any payment for or acceptance of any work or any extension of time or any possession taken by the Owner shall not operate as a waiver of any provision of this Contract, or any power therein preserved to the Owner, or of any right to damages therein provided. Any waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach.
- 27.2 The Owner reserves the right to correct any error that may be discovered in any estimate that may have been paid, and to adjust the same to meet requirements of this Contract. The Owner further reserves the right, should proof of defective work on the part of the Contractor be discovered after the final payment has been made, to claim and recover by process of law, such sums as may be sufficient to correct the error, or make good the defects in the work.
- 27.3 Any waiver of any provision of the Contract Documents shall be specific, shall be in writing, shall apply only to the particular item or matter concerned, and shall not apply to other similar or dissimilar items or matters.

28. SCOPE OF PAYMENT AND PAY QUANTITY

- 28.1 The Contractor shall receive and accept the compensation as herein provided in full payment for furnishing all materials, labor, tools, equipment and transportation, and for performing all work required to complete the work under this Contract; and also in full payment for all loss or damage arising from the nature of the work or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the work until its final acceptance by the Owner.
- 28.2 The prices stated in the Proposal include all costs and expenses for labor, equipment, materials, commissions, transportation charges and expenses, patent fees and royalties, labor for handling materials during observation and/or inspection, together with any and all other costs and expenses for performing and completing the work as specified.
- 28.3 Where the pay quantity for any item is designated to be based on plan quantity, such quantity will be revised only in the event that it is determined to be significantly in error. Any error shall be deemed significant if the quantity will increase or decrease in excess of five (5) percent of the original plan quantity for such item or the amount due to that item will increase or decrease in excess of \$25,000.00 (whichever is smaller). In general, such revisions, where significant, will be determined by final measurement and/or plan calculations as additions to or deductions from original plan quantities.

29. BASIS OF PAYMENT

- 29.1 The basis of payment shall be the Contract Lump Sum Price named in the Bid Pricing Form.

30. PARTIAL AND FINAL PAYMENTS

- 30.1 For the purpose of preparing a monthly estimate for partial payment, the Contractor will make an approximate estimate of the value of all work done as of the last day of each calendar month based summary line item cost (such as Muck Dredging or Muck Disposal), will provide documentation to support value of all work done (i.e. pay surveys) and will deduct the retainage (see Article V, Paragraph 6.1) thereof and all previous payments and charges and the balance will be paid by the Owner to the Contractor on or about thirty days after submittal to the Owner. The Contractor shall review and sign each monthly estimate and submit same to the Owner's Engineer or to the Owner, as directed. Such submittal constitutes request for payment by Contractor. The retainage which is deducted each month is reserved by the Owner as a partial guaranty to the Owner of the faithful execution of this Contract. As a consideration of payment minus retainage, the Owner shall have the right to enter upon and put into proper service any or all parts of the work which may be in condition for use; however, such use shall not be construed as the final acceptance and the commencement of the one (1) year guarantee bond period for any or all parts of the work, unless final acceptance is made for the complete project at that time. No claim or charge is to

be made by the Contractor for such use, nor is such use to be construed as an acceptance by the Owner of any part of the work so used.

- 30.2 Upon receipt of written notice from the Contractor that the work has been completed in conformity with the Drawings and Specifications and any approved modifications thereto, the Owner or the Owner's Engineer shall promptly examine the work, the job area (which includes haul roads for damages from heavy loads), and making such tests as the Owner's Engineer may deem proper and using all of the care and judgment normally exercised in the examination of completed work by a properly qualified and experienced professional Owner's Engineer, and shall be satisfied that the Contractor's statement appears to be correct. The Owner's Engineer shall then inform the Owner in writing that the Owner's Engineer has examined the work and that it appears to conform to the contract drawings, specifications, and any approved contract modifications and that the Owner's Engineer recommends acceptance and final payment to the Contractor. However, it is agreed by the Owner and the Contractor that such statement by the Owner's Engineer does not in any way relieve the Contractor from the Contractor's responsibility to deliver a completed job in good and workmanlike condition, and does not render the Owner's Engineer or the Owner liable for any faulty work done or materials used by the Contractor.
- 30.3 The Owner or the Owner's Engineer will then make a final estimate of the value of all work done and will deduct therefrom all previous payments which have been made. If applicable, the Owner's Engineer will report such estimate to the Owner together with the Owner's Engineer's recommendation as to the acceptance of the work or the Owner's Engineer's findings as to any deficiencies therein. Such recommendation as to the acceptance of work by the Owner's Engineer will be made to the Owner's Engineer's best knowledge and belief. After receipt and acceptance by the Owner of the properly executed Affidavit and Release of Lien and within sixty (60) days after approval of Owner's Engineer's final estimate and recommendation by Owner, the amount of the estimate, less any charges or damages herein provided for, will be paid. Upon final payment, the Owner shall be released by the Contractor from all liability whatever growing out of this Contract, except for the balance, if any, of such amount as may have been retained to cover charges, claims or damages, as specified; and if the Owner is satisfied that no such charges, claims or damages exist or will arise, no such amount will be retained. All prior estimates are subject to correction in the final estimate.
- 30.4 The initial partial payment shall be submitted on an Application for Payment Form and shall be accompanied by the schedule of values for each subcontractor, principal supplier and fabricator and list of products.
- 30.5 Each request for a partial payment shall be accompanied by an executed copy of the Certification of Contractor as provided in these documents.

- 30.6 After the initial partial payment, the Contractor shall additionally submit to the Owner an original signed Partial Release of Lien from each of the Contractor's subcontractors, material suppliers, equipment suppliers, and other companies and/or persons furnishing services, materials and/or equipment to the project that they have been paid from the previous month's payment for their services and supplies rendered. The partial lien release should include the value of their work and the amount they have been paid at the time the release is signed. Notwithstanding the foregoing, pursuant to section 255.05(11), Florida Statutes, when the Contractor has furnished and recorded a payment and performance bond and provided the Owner with a written consent from the Surety regarding the Project or payment in question, no such releases shall be required. The Surety may, in a writing served on the Owner, revoke its consent or direct that the Owner withhold a specified amount from a payment, which shall be effective upon receipt.
- 30.7 If during the final inspection, the Owner or the Owner's Engineer finds that the work is improperly performed or in any way inadequate and will require subsequent or additional inspections, the Contractor shall bear the expense of all such additional inspections at the rate of \$150.00 per hour. The inspection time shall include travel time from the Owner or the Owner's Engineer's office to the project site and back. If such additional inspections are required after the contract completion time, their expense shall be included in and covered by the liquidated damages.
- 30.8 The Owner may make final payment retainage releases when all of the contract work has been completed, the as-built drawings have been received and approved by the Owner's Engineer, all necessary paperwork has been received and approved, all final releases of liens have been received from the subcontractors and suppliers and there are no contract modifications to be approved by the Board of County Commissioners.
- 30.9 The Owner may, at its own discretion, issue joint checks to the Contractor, suppliers, and materials men when the Board has indications that the Contractor is not making payments in a timely manner, or when deemed appropriate by the Owner.

31. MEASUREMENT AND PAYMENT

- 31.1 Measurement and payment for work items for which direct payment is provided will be achieved as required by the Contract Documents. When no direct payment for work or materials is provided in the Contract Documents or shown, indicated or noted on the Drawings, compensation therefore shall be included in the Contract Unit or Lump Sum Prices for the several pay items under this Contract and shown and listed in the Proposal.

31.2 There will be no payment for overhead, profit, or miscellaneous expenses for any items totally deleted from the Contract in a timely manner.

32. AFFIDAVIT AND RELEASE OF LIEN

32.1 When the work has been completed, the Contractor shall execute a Final Release and an Affidavit declaring that all bills have been paid in full.

32.2 These documents will be furnished to the Owner in a form similar to those which appear on the following pages:

CERTIFICATION OF CONTRACTOR

According to the best of my knowledge and belief, I certify that all items and amounts shown on Application for Payment No. _____ are correct, that all work has been performed and/or materials supplied in full accordance with the terms and conditions of this Contract, dated _____, 2019, between Brevard County, Florida (Owner) and _____ (Contractor).

I further certify that all just and lawful bills against the undersigned and the undersigned's subcontractors and suppliers for labor, material and equipment employed in the performance of this Contract have been paid in full accordance with their terms and conditions; that all taxes imposed by Chapter 212, Florida Statutes (Sales and Use Tax Act), as amended, have been paid and discharged; and that there are no Vendor's, Mechanics', or other Liens or rights to liens or conditional sales contracts which should be satisfied or discharged before such payment is made.

Date: _____ Contractor: _____

STATE OF _____
COUNTY OF _____

Personally appeared before me this _____ day of _____, 2019,
_____ known (or made known) to me to be the
_____ of _____ Contractor(s),
who subscribed and swore to the above instrument in my presence.

Notary Public Signature

(Seal)

Notary Public Name (typed or printed)

My commission number is: _____

My commission expires: _____

The Contractor shall execute this Certificate and attach it to each Application for payment.

PERIODIC PAY ESTIMATE

FOR

SYKES CREEK PHASE I MUCK REMOVAL PROJECT

PAY ESTIMATE NO. XX
PROJECT NO. XXXXXX
DATE

CONTRACTOR'S CERTIFICATION

I hereby certify that all items and amounts listed on this Periodic Pay Estimate are correct and that all work has been performed and/or materials supplied in full accordance with the terms and conditions of the Contract between Brevard County and Maxwell Contracting, Inc., I further certify that the proceeds from this payment shall be used to make payment in a timely manner to all subcontractors and suppliers for work satisfactorily completed on this project, and that **there are no vendors', mechanics', or other liens or conditional sales contracts which must be satisfied or discharged before such payment is made.**

Contractor
BY: _____
DATE: _____

INSPECTOR'S CERTIFICATION

I hereby certify that the estimated quantities of work heretofore certified by the Contractor have been furnished, performed, or completed to the best of my knowledge.

Natural Resources Management Department
Owner Agency
BY: _____
Inspector
DATE: _____

ENGINEER'S CERTIFICATION

I hereby approve for payment the amount of \$ _____ indicated on this "Periodic Pay Estimate" and do hereby certify that this "Periodic Pay Estimate" is in conformance with the contract.

Engineering Responsibility
BY: _____
Engineer
DATE: _____

PAYMENT AUTHORIZED AND APPROVED

BREVARD COUNTY NATURAL RESOURCES MANAGEMENT DEPARTMENT

BY: _____
DATE: _____

PAY ESTIMATE NO. XXXXX
 PROJECT NO. XXXXXXXX
 DATE

ITEM (1)	DESCRIPTION AND RELATED ITEM (2)	ADDITIONS (3)	DEDUCTIONS (4)

ANALYSIS OF ADJUSTED CONTRACT AMOUNT TO DATE

- A. Original Contract Amount \$ _____
- B. Plus: Additions Scheduled Above \$ _____
- C. Less: Deductions Scheduled Above \$ _____
- D. ADJUSTED CONTRACT AMOUNT TO DATE \$ _____

ANALYSIS OF WORK PERFORMED

- 1. Total of work performed to date (based upon _____ percent) \$ _____
- 2. Add: Materials stored at close of period
 (Attach detailed schedule: \$ _____) \$ _____
- 3. Less: Amount retained @ _____ percent \$ _____
- 4. Net Amount Earned on Contract Work to Date \$ _____
- 5. Less: Amount for previous Estimates \$ _____
- 6. BALANCE DUE THIS STATEMENT \$ _____

AFFIDAVIT

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, authorized to administer oaths and take acknowledgments, personally appeared _____ who, after being first duly sworn, upon oath deposes and says that all lienors contracting directly with, or directly employed by (him, them, it) and that all taxes imposed by Chapter 212, Florida Statutes (Sales and Use Tax Act) as amended, have been paid and discharged, and that all bills, wages, fees, claims and other charges incurred by _____ relating to the work performed on the **Sykes Creek Phase I Muck Removal Project** have been paid and discharged.

SIGNED: _____

By: _____

WITNESSES:

SWORN AND SUBSCRIBED TO BEFORE ME THIS ____ day of _____, 2019.

Notary Public Signature

Notary Public (Type or Print)

My commission expires: _____

My commission number is: _____

(SEAL)

CHANGE ORDER NO. _____ to Contract No. Bid No. B-X-XX-XX

Project Title: Sykes Creek Phase I Muck Removal Project

Contractor:

Date:

<u>Contract Funds</u>	<u>Contract Time</u>
Original Contract Amount:	Original Contract Date:
Previous Change Orders:	Previous Change Orders: days
Previous Contract Sum:	Previous Contract Date:
Current Change Order:	Current Change Time: days
New Contract Total:	New Contract Date:

Previous Contract Modifications:

Description of Change (Attach additional sheets if required)	<u>Decrease</u>	<u>Increase</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Proposed Contract Modification:

Description of Change (Attach additional sheets if required)	<u>Decrease</u>	<u>Increase</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Substantial Completion Date (_____ calendar days):

Final Completion Date (_____ calendar days):

This Change Order is an amendment to the Contract Agreement between Contractor and the Owner, and all contract provisions shall apply unless specifically exempted. The amount and time change designated are the maximum agreed to by both the Owner and the Contractor for this change. In consideration of the foregoing adjustments in contract time and contract amount, the Contractor hereby releases Owner from all claims, demands or causes of action arising out of the transactions, events and occurrences giving rise to this Change Order. This written Change Order is the entire agreement between Owner and Contractor with respect to this Change Order. No other agreements or modifications shall apply to this Contract amendment unless expressly provided herein. This Change Order represents final action relating to this Change Order.

AGREED:

Signature (Contractor)

Signature (Owner)

Name and Title

Name and Title

Date

Date

WAIVER OF RIGHTS AGAINST PAYMENT BOND
UPON MONTHLY PARTIAL PAYMENT

The undersigned lienor, in consideration of the monthly partial payment in the amount of \$ _____ hereby waives and releases its rights to any claim against for labor, services, or materials furnished through (date) _____ on the project of Brevard County as described below:

Sykes Creek Phase I Muck Removal Project

The waiver and release does not cover any retention of labor, services, or materials furnished after the date specified.

Dated on _____, 2019

Lienor's Name _____

Address _____

By _____

Printed Name _____

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me this _____ day of _____, 2019, by _____, who is either personally known to me or produced _____, as identification, and who did/did not take an oath.

Notary Public Signature

Notary Public (Type or Print)

My commission expires: _____

My commission number is: _____

(SEAL)

WAIVER OF RIGHTS AGAINST PAYMENT BOND
UPON FINAL PAYMENT

The undersigned lienor, in consideration of the final payment in the amount of \$ _____ hereby waives and releases its lien and rights to any claim against the payment bond posted for this project arising out of any labor, services or materials furnished to (Contractor) _____ on the project of Brevard County as described below:

Sykes Creek Phase I Muck Removal Project

Dated on _____, 2019

Lienor's Name _____

Address _____

By _____

Printed Name _____

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me this _____ day of _____, 2019, by _____, who is either personally known to me or produced _____, as identification, and who did/did not take an oath.

Notary Public Signature

Notary Public (Type or Print)

My commission expires: _____

My commission number is: _____

(SEAL)

33. MATERIALS STORED

33.1 No partial payment will be made for materials, supplies, or equipment stored.

34. FIELD SAMPLING AND TESTING

34.1 Acceptance of material and work will be made only after all Sampling and Testing requirements for this Contract have been satisfied. The Owner's Designee shall have authority to order additional tests as deemed necessary, refuse materials furnished, and advise the Contractor of work that appears to be unacceptable.

34.2 Field sampling and testing will be done by an independent testing laboratory hired by the Contractor to do the testing on this construction Contract. Such laboratory must be qualified to perform all sampling and testing required for this project.

34.3 The Contractor will pay for all sampling and material testing. Cost for this testing is considered incidental to the project and no separate payment shall be made.

34.4 All field sampling and/or testing for compliance with Water Quality standards as required by the permits/permit exemptions, Federal, State and local regulatory agencies shall be performed by the Contractor. Cost for this testing is considered incidental to the project and no separate payment shall be made.

34.5 The Owner reserves the right to perform water quality testing to ensure water quality requirements are being met. This additional testing will be performed and paid for by the Owner.

35. CLEANUP

35.1 The Contractor shall keep the premises, site, drainage pipes and structures, and/or right-of-way free from accumulations of waste materials, rubbish and other debris resulting from the work. Upon completion of the work and before acceptance and final payment will be made, the Contractor shall clean and remove from the site, the right-of-way and adjacent property, all surplus and discarded materials, rubbish and temporary structures; restore in an acceptable manner all property, both public and private, which has been damaged during the execution of the work; and shall leave the site and vicinity unobstructed and in a neat and presentable condition throughout the entire area or length of the work under contract. The placing of materials of every character, rubbish, or equipment on abutting property, with or without the consent of the property owners, shall not constitute satisfactory disposal. If the work is of such character as may be done by blocks or sections, the Contractor may be required to remove promptly and dispose of accumulated rubbish, debris or surplus materials from blocks or sections as completed or partially completed.

35.2 In the event of delay exceeding two days after written notice is given to the Contractor by the Owner to remove such rubbish or materials, or to restore

displaced or damaged property, the Owner may employ such labor and equipment as the Owner may deem necessary for this purpose and the cost of such work, together with the cost of supervision, shall be charged to the Contractor, and shall be deducted from any money due the Contractor on the monthly or final pay estimate. No contract shall be considered as having been completed until all rubbish and surplus materials have been removed and properly disposed of.

36. RECOVERY RIGHTS SUBSEQUENT TO FINAL PAYMENT

36.1 The Owner reserves the right, should an error be discovered in the partial or final pay estimates, or proof of defective work or materials used by or on the part of the Contractor be discovered after the final payment has been made to claim and recover from the Contractor or the Surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the work and materials.

37. GENERAL GUARANTEE

37.1 Neither the final acceptance or payment by the Owner nor any provision of the Contract Documents, nor partial or entire use of the premises (work) by the Owner shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy all defects in the work and pay for all damage to other work, person or property resulting therefrom which shall appear within one (1) year from the date of final acceptance unless a longer period is specified. The Owner will give notice of observed defects with reasonable promptness. The Surety shall be bound with and for the Contractor in the Contractor's faithful observance of the General Guarantee.

38. LIQUIDATED DAMAGES

38.1 See Section V, Article 5 for Liquidated Damages.

39. PUBLIC CONSTRUCTION PERFORMANCE AND PAYMENT BONDS

39.1 Within five days of execution of the project Contract, by both parties, the Contractor shall provide to the Owner a copy of the Public Construction Performance Bond and the Public Construction Payment Bond that has been officially recorded in the office of the Clerk of the Circuit and County Court, and shall provide a copy of same to each and every subcontractor and supplier approved for the project, and notify them of deadlines to make claims under said bonds. The cost to record the documents is estimated at \$10.00 for the first page and \$8.50 for each page remaining. The Powers Of Attorney must be recorded with the bonds. Payment for the recording is incidental to the Contract.

40. SUNDAY WORK, NIGHT WORK

- 40.1 All work on Saturday/Sunday work must be approved by the Owner. A written request must be submitted to the Owner 72 hours in advance.
- 40.2 Permitted night work shall limit and/or reduce generation of noise levels to the greatest extent practicable. At the request of the Owner or the Owner's Engineer, the Contractor shall monitor his construction noise, and pay all costs associated in acquiring and using the equipment.
- 40.3 No work shall be performed on Sundays, legal holidays, or at night except for emergency maintenance of safety precautions or if approved by the Owner. Legal holidays are defined as follows:

<u>Holiday</u>	<u>Calendar Date</u>
New Year's Day	January 1st
Martin Luther King Jr's Birthday	3 rd Monday in January
Memorial Day	Last Monday in May
Independence Day	July 4 th
Labor Day	1 st Monday in September
Veteran's Day	2 nd Monday in November
Thanksgiving	4 th Thursday in November
Day after Thanksgiving	4 th Friday in November
Christmas Eve Day	December 24 th
Christmas Day	December 25 th

If a holiday falls on a Saturday, the preceding Friday will be observed as a holiday. If a holiday falls on a Sunday the following Monday will be observed as a holiday.

41. PRE AND POST-CONSTRUCTION CONDITIONS - VIDEO RECORDING

- 41.1 Contractor shall provide the Owner with two (2) copies of video records of the existing conditions within the proposed project work area (including shoreline, vessels and structures), DMMA (including SR 404 along the DMMA frontage), and any staging or spoil material handling areas prior to construction and prior to deployment of the equipment. This video shall be on a standard DVD-ROM and shall be narrated. The video shall show in a clear manner all of the following:
 - a) Ground condition and surrounding features of the DMMA
 - b) Entire length of project area shoreline.
 - c) All existing features within the work area, or rights-of-way (including SR 404).
 - d) All existing features adjacent to any construction.
 - e) Any other specific items requested by the Owner or Owner's Engineer.

Details of the video shall be such that the following examples shall be clear and visible:

- a) Cracks in walls, sidewalks, driveways, ramps, roads and drainage structures.
- b) Condition of fencing.
- c) Condition of planted areas and types of vegetation.
- d) Condition of sodded areas.
- e) Condition of sprinkler systems and associated controls and wiring.
- f) Condition of signs.
- g) Condition of lighting and associated wiring.
- h) Condition of mailboxes.
- i) Condition of waterway markers and other navigational aids.
- j) Condition of docks.
- k) Condition of seawalls.

Significant detail of any pre-existing damages to physical features shall be shown.

This video record shall be presented to the Owner within 5 days of the Notice to Proceed. A copy shall be kept in the Contractor's field office. The Contractor cannot start any other work until the Owner has received the video record.

Post-construction video records shall be conducted for the same project areas identified above. The Contractor shall submit two (2) copies of the post-construction video on DVD to the Owner prior to final project completion.

- 41.2 Payment –The work specified under this section shall be paid for at the Contract lump sum price for Pre- and Post-Construction Conditions – Video Recording of the Bid Schedule. The Contractor shall be paid 50% of the lump sum price for this item upon acceptance of the pre-construction video less the 10% retainage. The remaining 50% will be paid upon the Owner’s acceptance of the post-construction video.

42. SAFETY AND HEALTH STANDARDS

- 42.1 Federal Safety and Health Standards: It is a condition of this Contract and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any Subcontractor shall not require any laborer or mechanic employed in the performance of the Contract to work in surroundings or working under conditions, which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1518, published in the Federal Register on 04/17/71) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).
- 42.2 Copies of these safety and health regulations may be obtained from the United States Department of Labor, Post Office Box 35062, Jacksonville, FL 32202. The Department of Labor office is located in the U.S. Federal Office Building, 440 West Bay Street, Jacksonville, Florida; phone number (904) 791-2895.

- 42.3 Safety and Health Plan and Inspections: The Contractor shall develop and maintain a written Health and Safety Plan which allows the Work to be performed in compliance with all applicable laws, ordinances, rules, and regulations of any government agency having jurisdiction over the safety of personnel or property.

The Contractor shall institute a daily inspection program to assure that the requirements of the Health and Safety Plan are being fulfilled. Inspections shall include the nature of deficiencies observed, corrective action taken or to be taken, location of inspection, date, and signature of the person responsible for its contents. The results of the inspections shall be recorded on Daily Progress Reports and kept at the Project Site during the Work.

The Health and Safety Plan shall be submitted to the Engineer at least 14 days prior to the Pre-Construction Conference. The Contractor shall incorporate the Health and Safety Plan into the Work Plan. The Owner and Engineer are not responsible for the adequacy of this plan.

43. MAINTENANCE OF DRAINAGE

- 43.1 Construction methods shall be such that the drainage system on any upland staging or spoil material handling areas shall not be impeded during any rainfalls and shall be placed into a functional service at the end of each workday and shall also be functional on weekends. The Contractor shall be responsible for the maintenance of the drainage system throughout the contract period. All new or existing drainage structures, pipes, culverts, inlets, etc. within the project limits shall be free of debris and sediment at all times and cleaned at the end of the project.
- 43.2 Proper erosion and sediment control Best Management Practices (BMPs) shall be in place to protect any working drainage structures. Filter fabric, filter sock, silt fence, floating turbidity barrier, at a minimum shall be in place to protect the drainage structures.
- 43.3 The County reserves the right to require the Contractor to clean any other drainage structures or conveyances if the debris in the structures or conveyances was as a result of the Contractor's failure to use erosion and sediment control best management practices or due to negligence in the part of the Contractor.

44. STAGING AREA

The Owner provided DMMA site on SR 404 can be used as a staging area for storage of materials, equipment and personnel. No other staging areas are being provided by the COUNTY. Contractors are advised restoration of such areas is the Contractor's responsibility. The protection of stored materials shall be the Contractor's responsibility and the Owner shall not be liable for any loss of

materials by theft or otherwise, nor for any damage to the stored materials. No payment shall be made for stored materials. All applicable, local and state regulations regarding hauling of materials and use of public streets shall apply.

- a) Restoration of any staging areas shall be the Contractor's responsibility and at the Contractor's expense. No separate payment shall be made for any restoration (including sod, landscaping etc.).

SECTION VIII
SPECIAL CONDITIONS

1. STANDARD DOCUMENTS

Construction shall be conducted in such a manner as to cause the least possible interruption to adjacent properties. Necessary access to and from all buildings docks and private shorelines shall be provided at all times.

2. COORDINATION OF DRAWINGS, SPECIFICATIONS & OTHER DOCUMENTS

2.1 In case of discrepancy, computed dimensions shall govern over scaled dimensions; drawings and specifications shall take precedence as indicated under INTENT AND CORRELATION OF DOCUMENTS in the General Conditions. The Contractor shall seek such clarification well in advance of needing the response (at least seven working days).

2.2 In case of discrepancy, the governing order of the documents shall be as follows:

- a) Change Orders
- b) Addenda
- c) Contract
- d) Drawings
- e) Technical Specifications
- f) FDOT Road Design, Structures and Traffic Operations Standards (Latest Edition)
- g) FDOT Developmental Specifications
- h) Special Conditions
- i) General Conditions
- j) Instructions to Contractors

3. REPRESENTATIVE FOR CONTRACT ADMINISTRATION

3.1 Notice is hereby served that Taylor Engineering, Inc. is the Engineer of Record for the Design, Drawings, and Specifications. Routine daily construction observations, inspections, and routine acceptance of specified materials and workmanship remain the responsibility of the Owner or others the Owner designates for such work; e.g., the Resident Project Monitor. Additional details concerning contract administration is located throughout the Contract Documents.

4. USE OF PUBLIC STREETS

- 4.1 The use of public streets and alleys shall be such as to provide a minimum of inconvenience to the public and to other traffic. Any earth or other excavated material spilled from trucks shall be removed by the Contractor.
- 4.2 Prior to construction, the Contractor shall designate all proposed haul roads to be used during the life of the project. Driveways used during construction shall be stabilized to prevent dragging of sediment onto the streets. Any earth or other materials spilled from trucks shall be removed by the Contractor, and streets cleaned to the satisfaction of the Owner. He further shall be responsible for repairs to any damages caused by his operations, prior to final payment.
- 4.3 In the event paved areas are used to store, stockpile, load and unload, or subjected to tracked equipment traffic, the area(s) so used shall be re-video recorded, per Section VII Article 44, and photographed to document any damage or lack there-of caused by such use.

5. CARE OF TREES, SHRUBS AND GRASS

- 5.1 The Contractor shall be fully responsible for maintaining in good condition all cultivated grass plots, trees and shrubs. Where maintained shrubbery, grass strips or area must be removed or destroyed incident to the construction operation, the Contractor shall, after completion of the work, replace or restore to the original condition all destroyed or damaged shrubbery or grass areas. Tree limbs interfering with equipment operation and approved by Owner for pruning shall be neatly trimmed and the tree cut coated with tree paint. Contractor to trim vegetation to obtain minimum 10 foot vertical clearance above sidewalk at right-of-way line, as necessary.

6. DAMAGE TO EXISTING STRUCTURES AND UTILITIES

- 6.1 The Contractor shall be responsible for making good all direct damage to pavement beyond the limits of this Contract, buildings, telephone or other cables, water pipes, sanitary pipes, or other structures, which may be encountered, whether or not shown on the Drawings.

7. NOTIFICATION TO UTILITY COMPANIES

- 7.1 The excavators shall comply with Florida Statute 553.851 regarding notification of existing gas and oil pipeline company owners, and shall also notify "Sunshine State One-Call" at 1-800-432-4770 prior to excavating. Evidence of such notice shall be furnished to the Owner prior to excavating.

8. CONTRACT TIME

- 8.1 Contract time on this project will be charged on a calendar day basis. The Contractor and Owner recognize and agree that time is of the essence and that the Owner will suffer financial loss if the work is not completed within the times specified in the Contract. The contract time shall be as indicated in the Contract, Section V, Paragraph 3.2. Any deviations from the Contract time if not previously approved by the Owner and mutually agreed by the Owner and Contractor shall incur liquidated damages per Section V, Article 5 of the Contract.