



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

F.15.

12/21/2021

### Subject:

Approval, Re: Conveyance of Ellis Road from Wickham Road to Technology Drive (East) to the City of West Melbourne- District 5.

### Fiscal Impact:

None

### Dept/Office:

Public Works Department / Land Acquisition

### Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chair to execute the attached: 1) Resolution, 2) County Deed, 3) Interlocal Agreement and 4) authorize the Chair to approve and execute any future amendments to the Interlocal Agreement pertaining to the construction phase of the Ellis Road Widening Project.

### Summary Explanation and Background:

The subject property is located in Section 25 and 36, Township 27 South, Range 36 East, in West Melbourne.

For many years, the City of West Melbourne has supported the extension of the St. Johns Heritage Parkway, the construction of a new I-95 interchange with Ellis Road, the St. Johns Heritage Parkway and the widening of Ellis Road from John Rodes Boulevard to Wickham Road. The Florida Department of Transportation is moving forward with the Ellis Road Widening Project but requires ownership and maintenance responsibilities be better defined for the Ellis Segment in order to proceed. On September 7, 2021, the City adopted Resolution 2021-28 recognizing the City's longstanding ownership and maintenance responsibilities of that portion of Ellis Road from Wickham Road to Technology Drive (East). The attached County Deed will formalize ownership for Ellis Road for that segment from Wickham Road to Technology Drive (East) to the City of West Melbourne. The City will adopt and execute a Resolution accepting the road transfer and fully execute the Interlocal Agreement at their January 18, 2022 meeting. Upon adoption of the road transfer, the City agrees to record the transfer in the public records.

The User Department approves this request.

### Clerk to the Board Instructions:

Upon execution by the Chair, Public Works Department will contact the Clerk's office to make arrangements to pick up the original executed Resolution with attached exhibit, executed Interlocal Agreement with exhibit and executed County Deed with exhibit.



# BOARD OF COUNTY COMMISSIONERS

## AGENDA REVIEW SHEET

**AGENDA:** Resolution, Interlocal Agreement and County Deed for the transfer of Ellis Road from Wickham Road to Technology Drive (East) to the City of West Melbourne – District 5.

**AGENCY:** Public Works Department / Land Acquisition

**AGENCY CONTACT:** Lucy Hamelers, Land Acquisition Supervisor

**CONTACT PHONE:** 321-350-8353 Ext. 58353

	APPROVE	DISAPPROVE	DATE
<b>LAND ACQUISITION</b> Lucy Hamelers, Supervisor	<u>LA</u>	_____	<u>12.13.2021</u>
<b>COUNTY ATTORNEY</b> Alex Esseeesse Assistant County Attorney	<u>AE</u>	_____	<u>12/13/21</u>



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

December 22, 2021

**MEMORANDUM**

**TO:** Marc Bernath, Public Works Director

**Attn:** Lucy Hamelers

**RE:** Item F.15., Approval of Conveyance of Ellis Road from Wickham Road to Technology Drive (East) to the City of West Melbourne

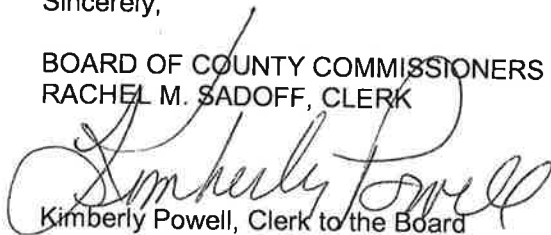
The Board of County Commissioners, in regular session on December 21, 2021, adopted Resolution 21-175, authorizing conveyance of Ellis Road from Wickham Road to Technology Drive (East) to the City of West Melbourne; executed and approved the County Deed; executed and approved the Interlocal Agreement with the City of West Melbourne relating to the transfer of roadway ownership, maintenance, drainage, and associated functional responsibilities for Ellis Road from Wickham Road to Technology Drive (East); and authorized the Chair to approve and execute any future amendments to the Interlocal Agreement pertaining to the construction phase of the Ellis Road Widening Project. Enclosed are fully-executed Resolution, executed Interlocal Agreement, and the executed County Deed.

**Upon execution by the City of West Melbourne and recordation of the Interlocal Agreement, please return the recorded Interlocal Agreement to this office for inclusion in the official minutes.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

  
Kimberly Powell, Clerk to the Board

/sm

Encls. (3)

cc: County Manager  
County Attorney

**RESOLUTION NO. 21- 175**

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, PURSUANT TO SECTION 125.38, FLORIDA STATUTES, AND SECTION 2-247, BREVARD COUNTY CODE OF ORDINANCES, AUTHORIZING CONVEYANCE OF COUNTY PROPERTY; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, Brevard County, Florida, a political subdivision of the State of Florida (hereinafter the "COUNTY"), owns certain interests in the public road right-of-way along Ellis Road within the City of West Melbourne, a municipality incorporated under the laws of Florida (hereinafter the "CITY"); and

**WHEREAS**, the right-of-way for said public road is referred to as Ellis Road from Wickham Road to Technology Drive (East) (hereinafter the "Ellis Segment"), which is further described in Exhibit A, which is attached hereto and incorporated herein by this reference; and

**WHEREAS**, for many years, the City Council of West Melbourne, Florida, has supported the extension of the St. Johns Heritage Parkway; the construction of a new I-95 interchange with Ellis Road and the St. Johns Heritage Parkway; and the widening of Ellis Road from John Rodes Boulevard to Wickham Road (hereinafter the "Ellis Road Widening Project"); and

**WHEREAS**, the Florida Department of Transportation is moving forward with the Ellis Road Widening Project and requires ownership and maintenance responsibilities be defined for the Ellis Segment in order to proceed; and

**WHEREAS**, on September 7, 2021, the CITY adopted Resolution 2021-28 recognizing the City's longstanding ownership and maintenance responsibilities of the Ellis Segment; and

**WHEREAS**, the CITY hereby accepts ownership, maintenance, and all associated functional responsibilities of the Ellis Segment, and associated roadway drainage facilities and other allied uses, as well as additional ownership and maintenance responsibilities that will result from the Ellis Road Widening Project; and

**WHEREAS**, the COUNTY agrees that the CITY's continued use of the Ellis Segment for roadway purposes will promote the public health, safety or welfare, will serve the public interest, will serve a public purpose; and the COUNTY has determined that said property is not needed for COUNTY purposes, and desires to cooperate with and assist the CITY by conveying any interest(s) it may have in the Ellis Segment to the City.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that:

1. The foregoing recitals are true and correct and are incorporated to this Resolution by this reference.

2. The Ellis Segment is fully described in Exhibit A, which is attached hereto and incorporated herein by this reference. The Ellis Segment is located within the jurisdictional boundaries of the CITY, and is not needed for COUNTY purposes.
3. The COUNTY finds the CITY has requested the conveyance and the CITY will use and maintain the Ellis Segment as a public right-of-way to provide a safe and well-kept roadway for the citizens of Brevard County.
4. In the event the Ellis Segment ceases to be used and/or maintained for a public roadway, with associated roadway drainage facilities and allied uses, the COUNTY does not retain any right to re-enter and repossess the property.
5. The COUNTY authorizes the Chair of the Board of County Commissioners to execute all necessary documents to convey the Ellis Segment to the CITY by County Deed at nominal consideration.
6. This Resolution shall take effect immediately upon its adoption.

This Resolution is **DONE, ORDERED, AND ADOPTED** in Regular Session, this 21st day of December, 2021.

ATTEST:

  
\_\_\_\_\_  
Rachel Sadoff, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
\_\_\_\_\_  
Kristine Zonka, Chair

As approved by the Board on: 12/21/2021

EXHIBIT A

**LEGAL DESCRIPTION: ELLIS ROAD TRANSFER PARCEL (BY SURVEYOR) LOCATED AT BREVARD COUNTY SURVEY BOOK 15 PAGE 82 DESCRIBED AS FOLLOWS:**

A PARCEL OF LAND BEING ALL OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 620, PAGE 859 AND OFFICIAL RECORD BOOK 641, PAGE 991 AND BEING A PORTION OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 30; OFFICIAL RECORDS BOOK 609, PAGE 36; AND OFFICIAL RECORDS BOOK 614, PAGE 359, ALL OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING LOCATED WITHIN SECTIONS 25 AND 36, TOWNSHIP 27 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 36; THENCE SOUTH 87° 52' 25" WEST ALONG THE NORTH LINE OF SAID SECTION 36 FOR A DISTANCE OF 456.27 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE SOUTH 02° 07' 35" EAST FOR A DISTANCE OF 50.00 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 620, PAGE 859, SAID POINT ALSO BEING A POINT ON THE WESTERLY RIGHT OF WAY LINE OF WICKHAM ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 9186, PAGE 2972; THENCE SOUTH 87° 52' 25" WEST ALONG SAID SOUTH RIGHT OF WAY LINE FOR A DISTANCE OF 878.49 FEET TO A POINT ON THE EAST LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 641, PAGE 991; THENCE SOUTH 87° 52' 25" WEST ALONG THE SOUTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 641, PAGE 991 FOR A DISTANCE OF 1329.72 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36, SAID POINT ALSO BEING A POINT ON THE EAST LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 30; THENCE SOUTH 86° 29' 41" WEST ALONG SAID SOUTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 30 FOR A DISTANCE OF 395.69 FEET; THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE, RUN NORTH 03° 30' 19" WEST FOR A DISTANCE OF 50.00 FEET TO A POINT ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36; THENCE CONTINUE NORTH 03° 30' 19" WEST FOR A DISTANCE OF 50.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 36 AND OFFICIAL RECORDS BOOK 614, PAGE 359; THENCE NORTH 86° 29' 41" EAST ALONG SAID NORTH RIGHT OF WAY LINE FOR A DISTANCE OF 399.00 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 25, SAID POINT ALSO BEING A POINT ON THE WEST PLAT LINE OF LAKE IBIS, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 21, PAGE 58; THENCE SOUTH 00° 24' 16" EAST ALONG THE AFORESAID EAST AND WEST LINES FOR A DISTANCE OF 50.07 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 25, SAID LINE ALSO BEING THE SOUTH LINE OF SAID PLAT BOOK 21, PAGE 58, AND SAID LINE ALSO BEING THE NORTH LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 641, PAGE 991; THENCE NORTH 87° 52' 25" EAST ALONG SAID SOUTH AND NORTH LINES FOR A DISTANCE OF 1331.86 FEET TO A POINT ON THE WEST LINE OF SAID DESCRIBED LANDS IN OFFICIAL RECORDS BOOK 620, PAGE 859; THENCE NORTH 87° 52' 25" EAST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 25, SAID LINE ALSO BEING THE NORTH LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 620, PAGE 859, AND SAID LINE ALSO BEING THE SOUTH PLAT LINE OF SILVER SAND SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 13, PAGE 93, FOR A DISTANCE OF 876.95 FEET TO THE POINT OF BEGINNING, CONTAINING 3.45 ACRES (150,107 SQUARE FEET), MORE OR LESS.

Prepared by and return to:  
Office of the County Attorney  
2725 Judge Fran Jamieson Way, Building C  
Viera, Florida 32940

**COUNTY DEED**  
(STATUTORY FORM - SECTION 125.411, Florida Statutes)

**THIS DEED**, made this 21st day of December, 2021, between Brevard County, Florida, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida, 32940, party of the first part, and the City of West Melbourne, a municipal corporation of the State of Florida, whose address is 2240 Minton Road, West Melbourne, Florida 32904, party of the second part,

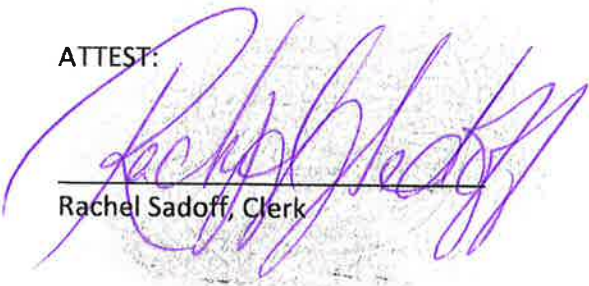
(Whenever used herein the terms "party of the first part" and "party of the second part" include all the parties to this instrument and their heirs, legal representatives, successors and assigns. "Party of the first part" and "party of the second part" are used for singular and plural, as the context requires and the use of any gender shall include all genders)

**WITNESSETH** that the party of the first part, for and in consideration of the sum of Ten Dollars, to it in hand paid by the party of the second part, receipt whereof is hereby acknowledged, has granted, bargained and sold to the party of the second part, its successors and assigns forever, any interest it holds in the following described land lying and being in Brevard County, Florida, to wit:

The property as fully described in Exhibit "A" attached hereto and incorporated herein by this reference, the first party transfers ownership, maintenance, and all associated functional responsibilities for that portion of Ellis Road from Wickham Road to Technology Drive (East), and associated roadway drainage facilities and other allied uses, together with all riparian and littoral rights appertaining thereto, and all interests in subsurface oil, gas, and minerals pursuant to Section 270.11(3), Florida Statutes. In the event the property ceases to be used and/or maintained for a public roadway, with associated roadway drainage facilities and allied uses, the party of the first part does not retain any right to re-enter and repossess the property.

**IN WITNESS WHEREOF**, the said party of the first part has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair of said Board, the day and year aforesaid.

ATTEST:

  
\_\_\_\_\_  
Rachel Sadoff, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

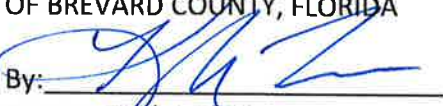
By:   
\_\_\_\_\_  
Kristine Zonka, Chair  
(As approved by the Board on 12-21-2021)



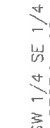
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13315 1 FO 1 ;

[illegible]NE 1/4 NE 1/4  
SECTION 36

NW 1/4, NE 1/4

TOWNSHIP 27 SOUTH, RANGE 36 EAST

SECTION 36

PC = PACE  
POB = POINT OF BEGINNING  
POC = POINT OF COMMENCEMENT  
PRUDE = PRUDENT UTILITY AND DRAINAGE  
EASEMENT  
R = RANGE OR RADIIUS  
R/W = RIGHT OF WAY  
SECT = SECTION  
SQ FT = SQUARE FEET  
T = TOWNSHIP  
TP = TAX PARCEL  
TYP = TYPICAL

ABBREVIATIONS:

- BASIS OF RECORDS
- BASIS OF COORDINATES
- CENTRE POINT ORIGIN: DISTRICT
- CORNER
- FLORIDA DEPARTMENT OF TRANSPORTATION
- INTERSECTION
- NOW OR FORMERLY
- OFFICIAL RECORDS BOOK
- PLAT BOOK

ELLIS ROAD TRANSFER PARCEL  
SKETCH & DESCRIPTION

ROBERT COUNTRY TOWN THE SKETCH AND DESCRIPTION WAS MADE BY THE ABOVE NAMED SURVEYOR AND WAS NOTED BY THE PRACTICE AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 4-171, FLORIDA STATUTES. THE SURVEYOR'S OFFICE IS LOCATED AT 10000 UNIVERSITY BLVD., SUITE 100, JACKSONVILLE, FLORIDA 32216. THE SURVEYOR'S LICENSE NUMBER IS 17000.

\_\_\_\_\_  
 MICHAEL J. SWEENEY, FOS 43070  
 PROFESSIONAL SURVEYOR & MAPPER

REPRODUCTION OR ALTERATION OF THIS DRAWING WITHOUT  
 PERMISSION OF THE SURVEYOR IS PROHIBITED.

**SURVEYING &  
MAPPING DIVISION**

2725 JUDGE FRANK  
JAMIESON WAY  
DOUGLAS AVE. STE. A220 MERRITT  
FL 32940  
PHONE: (321) 337-2050


 Brevard  
 COUNTY  
 Public Works

SHEET 1 OF 1  
SECTIONS 25 & 36, TOWNSHIP 27 SOUTH, RANGE 36 EAST

**INTERLOCAL AGREEMENT BETWEEN  
BREVARD COUNTY AND THE CITY OF WEST MELBOURNE  
RELATING TO THE TRANSFER OF ROADWAY OWNERSHIP, MAINTENANCE,  
DRAINAGE, AND ASSOCIATED FUNCTIONAL RESPONSIBILITIES FOR ELLIS  
ROAD FROM WICKHAM ROAD TO TECHNOLOGY DRIVE (EAST)**

**THIS INTERLOCAL AGREEMENT** ("Agreement") is entered into by and between BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (the "COUNTY") and the CITY OF WEST MELBOURNE, FLORIDA, a municipal corporation of the State of Florida, whose address is 2240 Minton Road, West Melbourne, Florida 32904 (the "CITY").

**WITNESSETH:**

**WHEREAS**, the COUNTY and the CITY desire to coordinate providing quality transportation facilities to enhance the quality of life for residents of Brevard County and West Melbourne, Florida; and

**WHEREAS**, the Parties have the common power to construct and maintain roadways and drainage systems within their geographical jurisdictions; and

**WHEREAS**, on September 7, 2021, the CITY adopted Resolution 2021-28 recognizing the CITY's longstanding ownership and maintenance responsibilities of the portion of Ellis Road from Wickham Road to Technology Drive (East) (the "Ellis Segment"), which is identified in Exhibit A attached hereto and incorporated herein by this reference; and

**WHEREAS**, the COUNTY and the CITY are agreeable to transfer ownership, maintenance, and all associated functional responsibilities of and for the Ellis Segment, and associated roadway drainage facilities and other allied uses, from the COUNTY to the CITY; and

**WHEREAS**, in order to move forward with the Ellis Road Widening Project, the COUNTY and CITY wish to advise the Florida Department of Transportation (the "F.D.O.T.") of this Agreement by means of the COUNTY providing the F.D.O.T., District 5, with a recorded copy of this Agreement and County Deed conveying ownership and maintenance obligations for the Ellis Segment to the CITY; and

**WHEREAS**, this Agreement is authorized pursuant to the provisions of Chapters 125, 163, and 166, Florida Statutes, and other applicable laws; and

**WHEREAS**, the Parties hereto have determined that this Agreement is in furtherance of the community health, safety, and welfare; serves a public benefit; and is in the public interest.

**NOW, THEREFORE**, in consideration of the premises herein, the Parties hereby agree as follows:

**Section 1. Recitals.** The above recitals are deemed true and correct and are hereby incorporated herein by this reference.

**Section 2. Purpose.** The purpose of this Agreement is for the COUNTY to assign and transfer to the CITY, ownership and jurisdiction over and full functional responsibility of the Ellis Segment, and associated roadway drainage facilities and other allied uses, including, but not limited to, permit authority within the right-of-way.

**Section 3. Transfer of Responsibility.** Attached as Exhibit B to this Agreement is a deed in accordance with Section 125.411, Florida Statutes, executed by the COUNTY transferring ownership, maintenance, and all associated functional responsibilities for the Ellis Segment, and associated roadway drainage facilities and other allied uses, to the CITY. The COUNTY shall be responsible for the cost to record the deed and this Agreement in the public records of Brevard County, Florida. Upon execution of this Agreement, which shall operate as acceptance of the Ellis Segment, the CITY shall have ownership of, plenary authority over and full responsibility for the functional operation and maintenance of the Ellis Segment, as specified in Section 2 above. All of the COUNTY's rights, responsibilities, liabilities, duties, and obligations as to the Ellis Segment shall be transferred to and assumed by the CITY and said right(s)-of-way shall be deemed the CITY's responsibility for all intents, purposes, and effects.

**Section 4. Limitations of Agreement.** It is not the intent of this Agreement to change the jurisdiction of the Parties in any manner except as specifically provided herein. All other policies, rules, regulations, and ordinances of the COUNTY and the CITY, respectively, will continue to apply as to the properties located within the jurisdictional boundaries of each party hereto. The maintenance of side roads, street name signs, and stop signs are the responsibilities of the Party in whose jurisdiction such road(s) and sign(s) are located, except as otherwise proved herein.

**Section 5. Other Agreements.** The Parties agree to execute such instruments and documents as may be required to effectuate this Agreement.

**Section 6. Indemnification.** Neither Party to this Agreement, its officers, employees, or agents, shall be deemed to assume any liability for the acts, omissions, or negligence of the other Party, its officers, employees, or agents. Each Party's indemnity and liability obligations shall be subject to the common law right of sovereign

immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing herein shall constitute a waiver of the respective Party's sovereign immunity.

**Section 7. Notices.**

(a) Whenever either Party desires to give notice to the other Party, notice shall be sent to:

**For the COUNTY**

Brevard County Public Works Department  
C/O Rachel Gerena, P.E.  
2725 Judge Fran Jamieson Way  
Building A, Room 204  
Viera, FL 32940

**For the CITY**

Scott Morgan, City Manager  
City Hall  
2240 Minton Road  
West Melbourne, FL 32904

(b) The COUNTY Manager or CITY Manager may change, by written notice as provided herein, the addresses or persons for receipt of notices. Each such notice shall be deemed delivered on the date delivered if by personal delivery or on the date of transmission if by facsimile, or on the date upon which the return receipt is signed or delivery is refused or notice is designated by the postal authorities as not deliverable, as the case may be, if mailed or date of delivery by overnight delivery services as evidenced by a service receipt.

**Section 8. Counterparts.** This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

**Section 9. Entire Agreement.** This Agreement, along with the County Deed, constitutes the entire agreement of the Parties with respect to the subject matter hereof, and neither this Agreement nor any portion of it may be altered, modified, waived, deleted, or amended except by a written instrument signed by both Parties' authorized representatives. This Agreement supersedes all oral agreements and negotiations between the Parties relating to the subject matter of this Agreement.

**Section 10. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the successors in interest, transferees, and assigns of the Parties.

**Section 11. Public Records.** The Parties shall allow public access to all documents, papers, letter, or other materials subject to the provisions of Chapter 119, Florida Statutes, which have been made or received in conjunction with this Agreement.

**Section 12. Conflict of Interest.** Both Parties agree that they will not commit any act in the performance of its obligations pursuant to this Agreement that would create a conflict of interest, as defined by Chapter 112, Florida Statutes.

**Section 13. Effective Date.** This Agreement shall take effect upon the date of recording in the Public Records of Brevard County, Florida.

**IN WITNESS WHEREOF,** the Parties hereto have made and executed this Agreement through their authorized representative on the date last written below.

**ATTEST:**

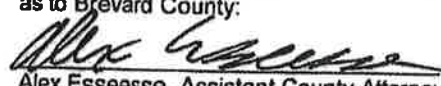
By:   
Rachel Sadoff, Clerk

**BREVARD COUNTY, FLORIDA**

By:   
Kristine Zonka, Chair      DATE

As approved by the Board on: 12-21-2021

Approved as to legal form and sufficiency  
as to Brevard County:

  
Alex Essee, Assistant County Attorney

**ATTEST:**

By: \_\_\_\_\_  
Cynthia Hanscom, City Clerk

**CITY OF WEST MELBOURNE,  
FLORIDA**

By: \_\_\_\_\_  
Hal J. Rose, Mayor      DATE

As authorized by the City of West  
Melbourne City Council on: \_\_\_\_\_

Approved as to legal form and sufficiency  
as to the City of West Melbourne:

\_\_\_\_\_  
Morris Richardson, City Attorney

## Exhibit A

### **LEGAL DESCRIPTION: ELLIS ROAD TRANSFER PARCEL (BY SURVEYOR) LOCATED AT BREVARD COUNTY SURVEY BOOK 15 PAGE 82 DESCRIBED AS FOLLOWS:**

A PARCEL OF LAND BEING ALL OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 620, PAGE 859 AND OFFICIAL RECORD BOOK 641, PAGE 991 AND BEING A PORTION OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 30; OFFICIAL RECORDS BOOK 609, PAGE 36; AND OFFICIAL RECORDS BOOK 614, PAGE 359, ALL OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING LOCATED WITHIN SECTIONS 25 AND 36, TOWNSHIP 27 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 36; THENCE SOUTH 87° 52' 25" WEST ALONG THE NORTH LINE OF SAID SECTION 36 FOR A DISTANCE OF 456.27 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE SOUTH 02° 07' 35" EAST FOR A DISTANCE OF 50.00 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 620, PAGE 859, SAID POINT ALSO BEING A POINT ON THE WESTERLY RIGHT OF WAY LINE OF WICKHAM ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 9186, PAGE 2972; THENCE SOUTH 87° 52' 25" WEST ALONG SAID SOUTH RIGHT OF WAY LINE FOR A DISTANCE OF 878.49 FEET TO A POINT ON THE EAST LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 641, PAGE 991; THENCE SOUTH 87° 52' 25" WEST ALONG THE SOUTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 641, PAGE 991 FOR A DISTANCE OF 1329.72 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36, SAID POINT ALSO BEING A POINT ON THE EAST LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 30; THENCE SOUTH 86° 29' 41" WEST ALONG SAID SOUTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 30 FOR A DISTANCE OF 395.69 FEET; THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE, RUN NORTH 03° 30' 19" WEST FOR A DISTANCE OF 50.00 FEET TO A POINT ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36; THENCE CONTINUE NORTH 03° 30' 19" WEST FOR A DISTANCE OF 50.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 36 AND OFFICIAL RECORDS BOOK 614, PAGE 359; THENCE NORTH 86° 29' 41" EAST ALONG SAID NORTH RIGHT OF WAY LINE FOR A DISTANCE OF 399.00 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 25, SAID POINT ALSO BEING A POINT ON THE WEST PLAT LINE OF LAKE IBIS, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 21, PAGE 58; THENCE SOUTH 00° 24' 16" EAST ALONG THE AFORESAID EAST AND WEST LINES FOR A DISTANCE OF 50.07 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 25, SAID LINE ALSO BEING THE SOUTH LINE OF SAID PLAT BOOK 21, PAGE 58, AND SAID LINE ALSO BEING THE NORTH LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 641, PAGE 991; THENCE NORTH 87° 52' 25" EAST ALONG SAID SOUTH AND NORTH LINES FOR A DISTANCE OF 1331.86 FEET TO A POINT ON THE WEST LINE OF SAID DESCRIBED LANDS IN OFFICIAL RECORDS BOOK 620, PAGE 859; THENCE NORTH 87° 52' 25" EAST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 25, SAID LINE ALSO BEING THE NORTH LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 620, PAGE 859, AND SAID LINE ALSO BEING THE SOUTH PLAT LINE OF SILVER SAND SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 13, PAGE 93, FOR A DISTANCE OF 876.95 FEET TO THE POINT OF BEGINNING, CONTAINING 3.45 ACRES (150,107 SQUARE FEET), MORE OR LESS.

Prepared by and return to:  
Office of the County Attorney  
2725 Judge Fran Jamieson Way, Building C  
Viera, Florida 32940

EXHIBIT B

**COUNTY DEED**  
(STATUTORY FORM - SECTION 125.411, Florida Statutes)

**THIS DEED**, made this 21st day of December, 2021, between Brevard County, Florida, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida, 32940, party of the first part, and the City of West Melbourne, a municipal corporation of the State of Florida, whose address is 2240 Minton Road, West Melbourne, Florida 32904, party of the second part,

(Whenever used herein the terms "party of the first part" and "party of the second part" include all the parties to this instrument and their heirs, legal representatives, successors and assigns. "Party of the first part" and "party of the second part" are used for singular and plural, as the context requires and the use of any gender shall include all genders)

**WITNESSETH** that the party of the first part, for and in consideration of the sum of Ten Dollars, to it in hand paid by the party of the second part, receipt whereof is hereby acknowledged, has granted, bargained and sold to the party of the second part, its successors and assigns forever, any interest it holds in the following described land lying and being in Brevard County, Florida, to wit:

The property as fully described in Exhibit "A" attached hereto and incorporated herein by this reference, the first party transfers ownership, maintenance, and all associated functional responsibilities for that portion of Ellis Road from Wickham Road to Technology Drive (East), and associated roadway drainage facilities and other allied uses, together with all riparian and littoral rights appertaining thereto, and all interests in subsurface oil, gas, and minerals pursuant to Section 270.11(3), Florida Statutes. In the event the property ceases to be used and/or maintained for a public roadway, with associated roadway drainage facilities and allied uses, the party of the first part does not retain any right to re-enter and repossess the property.

**IN WITNESS WHEREOF**, the said party of the first part has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair of said Board, the day and year aforesaid.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

\_\_\_\_\_  
Rachel Sadoff, Clerk

By: \_\_\_\_\_  
Kristine Zonka, Chair  
(As approved by the Board on 12-21-2021)



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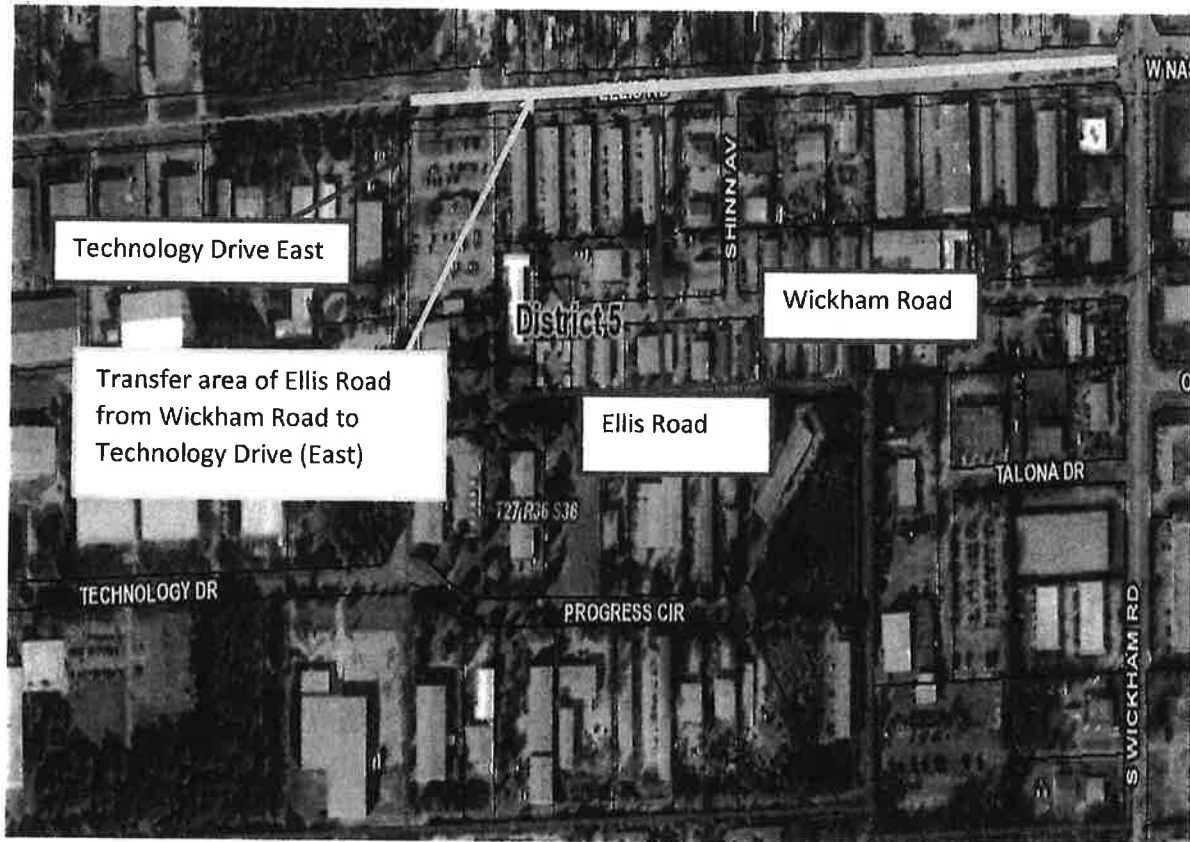
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## LOCATION MAP

**Sections 25 and 36, Township 27 South, Range 36 East - District: 5**

**ROAD TRANSFER LOCATION:** Ellis Road from Wickham Road to Technology Drive (East)



**Deborah Thomas**

12/21/2021

**From:** Cruz, Debbie <Debbie.Cruz@brevardfl.gov>  
**Sent:** Monday, April 18, 2022 1:39 PM  
**To:** Powell, Kimberly  
**Cc:** Deborah Thomas  
**Subject:** Board Meeting - December 21, 2021-Agenda Item F.15.  
**Attachments:** Memo-F.15. dated 12212021.pdf; Interlocal Agreement-exec.pdf

Pursuant to your request in the memorandum dated 12/22/2021, regarding the above-referenced agenda item, please find attached a copy of the executed Interlocal Agreement from City of West Melbourne.

Thank you,

Debbie Cruz  
Special Projects Coordinator I  
Brevard County Public Works Department  
Land Acquisition  
Phone: 321-350-8354  
Ext: 58354

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

This email was scanned by Bitdefender

F.15.

✓



December 22, 2021

**M E M O R A N D U M**

**TO:** Marc Bernath, Public Works Director

**Attn:** Lucy Hamelers

**RE:** Item F.15., Approval of Conveyance of Ellis Road from Wickham Road to Technology Drive (East) to the City of West Melbourne

The Board of County Commissioners, in regular session on December 21, 2021, adopted Resolution 21-175, authorizing conveyance of Ellis Road from Wickham Road to Technology Drive (East) to the City of West Melbourne; executed and approved the County Deed; executed and approved the Interlocal Agreement with the City of West Melbourne relating to the transfer of roadway ownership, maintenance, drainage, and associated functional responsibilities for Ellis Road from Wickham Road to Technology Drive (East); and authorized the Chair to approve and execute any future amendments to the Interlocal Agreement pertaining to the construction phase of the Ellis Road Widening Project. Enclosed are fully-executed Resolution, executed Interlocal Agreement, and the executed County Deed.

**Upon execution by the City of West Melbourne and recordation of the Interlocal Agreement, please return the recorded Interlocal Agreement to this office for inclusion in the official minutes.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

  
Kimberly Powell, Clerk to the Board

/sm

Encls. (3)

**cc:** County Manager  
County Attorney

**INTERLOCAL AGREEMENT BETWEEN  
BREVARD COUNTY AND THE CITY OF WEST MELBOURNE  
RELATING TO THE TRANSFER OF ROADWAY OWNERSHIP, MAINTENANCE,  
DRAINAGE, AND ASSOCIATED FUNCTIONAL RESPONSIBILITIES FOR ELLIS  
ROAD FROM WICKHAM ROAD TO TECHNOLOGY DRIVE (EAST)**

**THIS INTERLOCAL AGREEMENT** ("Agreement") is entered into by and between BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (the "COUNTY") and the CITY OF WEST MELBOURNE, FLORIDA, a municipal corporation of the State of Florida, whose address is 2240 Minton Road, West Melbourne, Florida 32904 (the "CITY").

**WITNESSETH:**

**WHEREAS**, the COUNTY and the CITY desire to coordinate providing quality transportation facilities to enhance the quality of life for residents of Brevard County and West Melbourne, Florida; and

**WHEREAS**, the Parties have the common power to construct and maintain roadways and drainage systems within their geographical jurisdictions; and

**WHEREAS**, on September 7, 2021, the CITY adopted Resolution 2021-28 recognizing the CITY's longstanding ownership and maintenance responsibilities of the portion of Ellis Road from Wickham Road to Technology Drive (East) (the "Ellis Segment"), which is identified in Exhibit A attached hereto and incorporated herein by this reference; and

**WHEREAS**, the COUNTY and the CITY are agreeable to transfer ownership, maintenance, and all associated functional responsibilities of and for the Ellis Segment, and associated roadway drainage facilities and other allied uses, from the COUNTY to the CITY; and

**WHEREAS**, in order to move forward with the Ellis Road Widening Project, the COUNTY and CITY wish to advise the Florida Department of Transportation (the "F.D.O.T.") of this Agreement by means of the COUNTY providing the F.D.O.T., District 5, with a recorded copy of this Agreement and County Deed conveying ownership and maintenance obligations for the Ellis Segment to the CITY; and

**WHEREAS**, this Agreement is authorized pursuant to the provisions of Chapters 125, 163, and 166, Florida Statutes, and other applicable laws; and

**WHEREAS**, the Parties hereto have determined that this Agreement is in furtherance of the community health, safety, and welfare; serves a public benefit; and is in the public interest.

**NOW, THEREFORE**, in consideration of the premises herein, the Parties hereby agree as follows:

**Section 1. Recitals.** The above recitals are deemed true and correct and are hereby incorporated herein by this reference.

**Section 2. Purpose.** The purpose of this Agreement is for the COUNTY to assign and transfer to the CITY, ownership and jurisdiction over and full functional responsibility of the Ellis Segment, and associated roadway drainage facilities and other allied uses, including, but not limited to, permit authority within the right-of-way.

**Section 3. Transfer of Responsibility.** Attached as Exhibit B to this Agreement is a deed in accordance with Section 125.411, Florida Statutes, executed by the COUNTY transferring ownership, maintenance, and all associated functional responsibilities for the Ellis Segment, and associated roadway drainage facilities and other allied uses, to the CITY. The COUNTY shall be responsible for the cost to record the deed and this Agreement in the public records of Brevard County, Florida. Upon execution of this Agreement, which shall operate as acceptance of the Ellis Segment, the CITY shall have ownership of, plenary authority over and full responsibility for the functional operation and maintenance of the Ellis Segment, as specified in Section 2 above. All of the COUNTY's rights, responsibilities, liabilities, duties, and obligations as to the Ellis Segment shall be transferred to and assumed by the CITY and said right(s)-of-way shall be deemed the CITY's responsibility for all intents, purposes, and effects.

**Section 4. Limitations of Agreement.** It is not the intent of this Agreement to change the jurisdiction of the Parties in any manner except as specifically provided herein. All other policies, rules, regulations, and ordinances of the COUNTY and the CITY, respectively, will continue to apply as to the properties located within the jurisdictional boundaries of each party hereto. The maintenance of side roads, street name signs, and stop signs are the responsibilities of the Party in whose jurisdiction such road(s) and sign(s) are located, except as otherwise proved herein.

**Section 5. Other Agreements.** The Parties agree to execute such instruments and documents as may be required to effectuate this Agreement.

**Section 6. Indemnification.** Neither Party to this Agreement, its officers, employees, or agents, shall be deemed to assume any liability for the acts, omissions, or negligence of the other Party, its officers, employees, or agents. Each Party's indemnity and liability obligations shall be subject to the common law right of sovereign

immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing herein shall constitute a waiver of the respective Party's sovereign immunity.

**Section 7. Notices.**

- (a) Whenever either Party desires to give notice to the other Party, notice shall be sent to:

**For the COUNTY**

Brevard County Public Works Department  
C/O Rachel Gerena, P.E.  
2725 Judge Fran Jamieson Way  
Building A, Room 204  
Viera, FL 32940

**For the CITY**

Scott Morgan, City Manager  
City Hall  
2240 Minton Road  
West Melbourne, FL 32904

- (b) The COUNTY Manager or CITY Manager may change, by written notice as provided herein, the addresses or persons for receipt of notices. Each such notice shall be deemed delivered on the date delivered if by personal delivery or on the date of transmission if by facsimile, or on the date upon which the return receipt is signed or delivery is refused or notice is designated by the postal authorities as not deliverable, as the case may be, if mailed or date of delivery by overnight delivery services as evidenced by a service receipt.

**Section 8. Counterparts.** This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

**Section 9. Entire Agreement.** This Agreement, along with the County Deed, constitutes the entire agreement of the Parties with respect to the subject matter hereof, and neither this Agreement nor any portion of it may be altered, modified, waived, deleted, or amended except by a written instrument signed by both Parties' authorized representatives. This Agreement supersedes all oral agreements and negotiations between the Parties relating to the subject matter of this Agreement.

**Section 10. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the successors in interest, transferees, and assigns of the Parties.

**Section 11. Public Records.** The Parties shall allow public access to all documents, papers, letter, or other materials subject to the provisions of Chapter 119, Florida Statutes, which have been made or received in conjunction with this Agreement.



**Section 12. Conflict of Interest.** Both Parties agree that they will not commit any act in the performance of its obligations pursuant to this Agreement that would create a conflict of interest, as defined by Chapter 112, Florida Statutes.

**Section 13. Effective Date.** This Agreement shall take effect upon the date of recording in the Public Records of Brevard County, Florida.

**IN WITNESS WHEREOF,** the Parties hereto have made and executed this Agreement through their authorized representative on the date last written below.

ATTEST:

By:   
Rachel Sadoff, Clerk

BREVARD COUNTY, FLORIDA

By:   
Kristine Zonka, Chair DATE

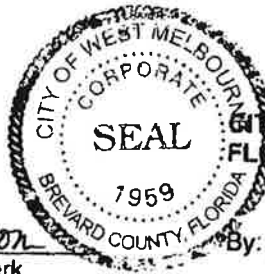
As approved by the Board on: 12-21-2021

Approved as to legal form and sufficiency  
as to Brevard County:

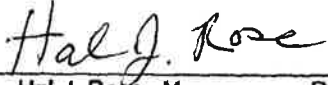
  
Alex Essee, Assistant County Attorney

ATTEST:

By:   
Cynthia Hanscom, City Clerk



CITY OF WEST MELBOURNE,  
FLORIDA

By:   
Hal J. Rose, Mayor DATE

As authorized by the City of West  
Melbourne City Council on: January 18, 2022

Approved as to legal form and sufficiency  
as to the City of West Melbourne:

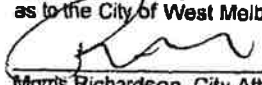
  
Morris Richardson, City Attorney

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Viera, Florida 32940

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The property as fully described in Exhibit "A" attached hereto and incorporated herein by this reference, the first party transfers ownership, maintenance, and all associated functional responsibilities for that portion of Ellis Road from Wickham Road to Technology Drive (East), and associated roadway drainage facilities and other allied uses, together with all riparian and littoral rights appertaining thereto, and all interests in subsurface oil, gas, and minerals pursuant to Section 270.11(3), Florida Statutes. In the event the property ceases to be used and/or maintained for a public roadway, with associated roadway drainage facilities and allied uses, the party of the first part does not retain any right to re-enter and repossess the property.

**IN WITNESS WHEREOF**, the said party of the first part has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair of said Board, the day and year aforesaid.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

\_\_\_\_\_  
Rachel Sadoff, Clerk

By: \_\_\_\_\_  
Kristine Zonka, Chair  
(As approved by the Board on 12-21-2021)

EXHIBIT A

**LEGAL DESCRIPTION: ELLIS ROAD TRANSFER PARCEL (BY SURVEYOR) LOCATED AT BREVARD COUNTY SURVEY BOOK 15 PAGE 82 DESCRIBED AS FOLLOWS:**

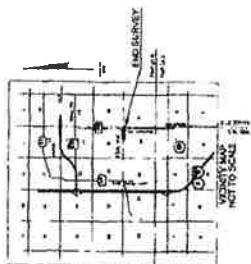
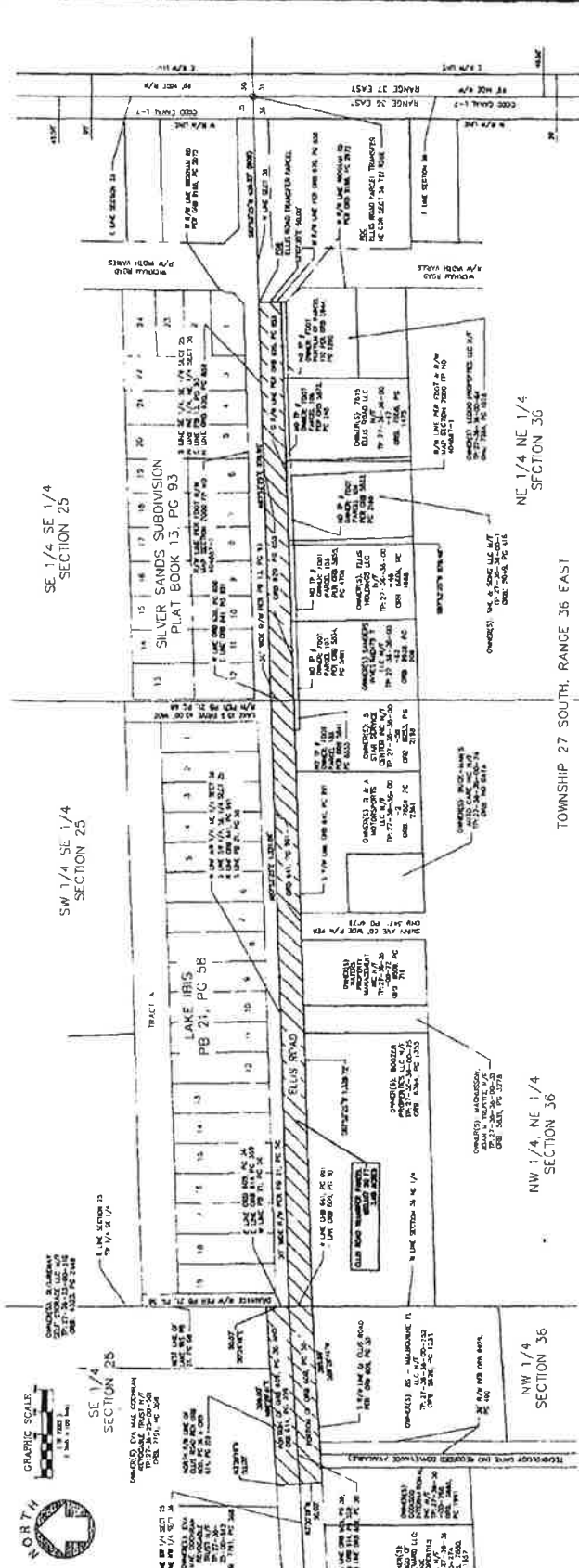
A PARCEL OF LAND BEING ALL OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 620, PAGE 859 AND OFFICIAL RECORD BOOK 641, PAGE 991 AND BEING A PORTION OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 30; OFFICIAL RECORDS BOOK 609, PAGE 36; AND OFFICIAL RECORDS BOOK 614, PAGE 359, ALL OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING LOCATED WITHIN SECTIONS 25 AND 36, TOWNSHIP 27 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 36; THENCE SOUTH 87° 52' 25" WEST ALONG THE NORTH LINE OF SAID SECTION 36 FOR A DISTANCE OF 456.27 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE SOUTH 02° 07' 35" EAST FOR A DISTANCE OF 50.00 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 620, PAGE 859, SAID POINT ALSO BEING A POINT ON THE WESTERLY RIGHT OF WAY LINE OF WICKHAM ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 9186, PAGE 2972; THENCE SOUTH 87° 52' 25" WEST ALONG SAID SOUTH RIGHT OF WAY LINE FOR A DISTANCE OF 878.49 FEET TO A POINT ON THE EAST LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 641, PAGE 991; THENCE SOUTH 87° 52' 25" WEST ALONG THE SOUTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 641, PAGE 991 FOR A DISTANCE OF 1329.72 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36, SAID POINT ALSO BEING A POINT ON THE EAST LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 30; THENCE SOUTH 86° 29' 41" WEST ALONG SAID SOUTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 30 FOR A DISTANCE OF 395.69 FEET; THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE, RUN NORTH 03° 30' 19" WEST FOR A DISTANCE OF 50.00 FEET TO A POINT ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36; THENCE CONTINUE NORTH 03° 30' 19" WEST FOR A DISTANCE OF 50.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF ELLIS ROAD PER SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 609, PAGE 36 AND OFFICIAL RECORDS BOOK 614, PAGE 359; THENCE NORTH 86° 29' 41" EAST ALONG SAID NORTH RIGHT OF WAY LINE FOR A DISTANCE OF 399.00 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 25, SAID POINT ALSO BEING A POINT ON THE WEST PLAT LINE OF LAKE IBIS, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 21, PAGE 58; THENCE SOUTH 00° 24' 16" EAST ALONG THE AFORESAID EAST AND WEST LINES FOR A DISTANCE OF 50.07 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 25, SAID LINE ALSO BEING THE SOUTH LINE OF SAID PLAT BOOK 21, PAGE 58, AND SAID LINE ALSO BEING THE NORTH LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 641, PAGE 991; THENCE NORTH 87° 52' 25" EAST ALONG SAID SOUTH AND NORTH LINES FOR A DISTANCE OF 1331.86 FEET TO A POINT ON THE WEST LINE OF SAID DESCRIBED LANDS IN OFFICIAL RECORDS BOOK 620, PAGE 859; THENCE NORTH 87° 52' 25" EAST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 25, SAID LINE ALSO BEING THE NORTH LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 620, PAGE 859, AND SAID LINE ALSO BEING THE SOUTH PLAT LINE OF SILVER SAND SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 13, PAGE 93, FOR A DISTANCE OF 876.95 FEET TO THE POINT OF BEGINNING, CONTAINING 3.45 ACRES (150,107 SQUARE FEET), MORE OR LESS.

ELLIS ROAD TRANSFER PARCEL  
SKETCH AND DESCRIPTION  
BREVARD COUNTY, FLORIDA

SECTION 25 & 36, TOWNSHIP 27, S RANGE 36 E

LESTER OCCUPATION: BUILT FROM PLANT (BY FLEET)

[illegible]NE 1/4 NE 1/4  
SECTION 36

TOWNSHIP 27 SOUTH, RANGE 36 EAST

NW 1/4, NE 1/4  
SECTION 36

NW 1/4  
SECTION 38

DATE	NO. 1530N
------	-----------

SURVEYING &  
MAPPING DIVISION  
2225 JUDGE FRANK  
JAMALSON WAY  
A. STE. A220 MERR  
FL 329-0  
PH: 321-5-3-2083

[illegible][illegible]

ELLIS ROAD TRANSFER PARCEL  
SKETCH & DESCRIPTION

SHEET 1 OF 1

[illegible]



BOARD OF COUNTY COMMISSIONERS

12/21/2021  
Utility Services Department  
2725 Judge Fran Jamieson Way  
Building A, Room 213  
Viera, Florida 32940

## Inter-Office Memo

Date: December 20, 2021

To: Kristine Zonka, Chair  
Board of County Commissioners

Through: Frank Abbate, County Manager *FA*

Through: John Denninghoff, Assistant County Manager *JDS*

From: Edward Fontanin, Utilities Director *EF*  
Virginia Barker, Natural Resources Director *VB*

Subject: Professional Services Contract  
Indian River Lagoon Restoration Program  
Wade Trim, Inc.

This Contract is part of the elimination of prioritized septic tanks by extending wastewater collection to certain areas of Brevard County. This scope of work describes the services to be provided by Wade Trim for the data collection, preliminary design, final design and construction phase services for specified service areas and supporting work. The service areas will include North Merritt Island, South Merritt Island, and Little Hollywood.

This project was included in the FY 2021-22 Budget approved by the Board of County Commissioners in special session on September 14, 2021 in adopted Resolution 21-122 establishing the final budget for FY 2020-21. Funding for these services is from the Save Our Indian River Lagoon Trust Fund.

If you have any questions, please notify me at 350-8373.

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

## CONTRACT REVIEW AND APPROVAL FORM

### SECTION I - GENERAL INFORMATION

1. Contractor: Wade Trim, Inc		2. Amount: 8,175,000.00
3. Fund/Account #:	4. Department Name: Utilities Department	
5. Contract Description: Engineering Contract Template Draft for Septic to Sewer Conversion Projects		
6. Contract Monitor: Jennifer Thomas	8. Contract Type:  CONSULTANT	
7. Dept/Office Director: Utilities/ Eddie Fontanin		
9. Type of Procurement: Request for Qualifications (RFQ)		

### SECTION II - REVIEW AND APPROVAL TO ADVERTISE

#### APPROVAL

#### COUNTY OFFICE

YES

NO

#### SIGNATURE

User Agency



Fontanin, Edward

Digitally signed by Fontanin, Edward  
Date: 2021.02.19 09:08:23 -05'00'

Purchasing



Reynolds, Stephanie

Digitally signed by Reynolds, Stephanie  
Date: 2021.02.19 12:52:34 -05'00'

Risk Management



Lairsey, Matt

Digitally signed by Lairsey, Matt  
Date: 2021.02.24 09:04:38 -05'00'

County Attorney



Schverak, Christine

Digitally signed by Schverak, Christine  
Date: 2021.02.19 16:47:18 -05'00'

### SECTION III - REVIEW AND APPROVAL TO EXECUTE

#### APPROVAL

#### COUNTY OFFICE

YES

NO

#### SIGNATURE

User Agency



Fontanin, Edward

Digitally signed by Fontanin, Edward  
Date: 2021.11.29 15:27:02 -05'00'

Purchasing



Darling, Steven

Digitally signed by Darling, Steven  
Date: 2021.11.30 13:52:30 -05'00'

Risk Management



Lairsey, Matt

Digitally signed by Lairsey, Matt  
Date: 2021.12.01 11:22:57 -05'00'

County Attorney



Balser, Heather

Digitally signed by Balser, Heather  
Date: 2021.12.07 10:56:47 -05'00'

### SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

12/21/2024

BREVARD COUNTY  
UTILITY SERVICES DEPARTMENT

PROFESSIONAL SERVICES CONTRACT  
WADE TRIM, INC.  
RFQ #7-21-09 – INDIAN RIVER LAGOON RESTORATION PROGRAM –  
SEPTIC TO SEWER CONVERSION PROJECT

Brevard County Utility Services Department  
Brevard County Government Center  
2725 Judge Fran Jamieson Way  
Building A, Suite 213  
Viera, Florida 32940



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## PROFESSIONAL SERVICES MASTER SERVICES CONTRACT

**THIS CONTRACT** is made by and between the following Parties: **BOARD OF COUNTY COMMISSIONERS, BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as **COUNTY**, and **WADE TRIM, INC.**, a business having its principal address at **3790 Dixie Highway NE, Palm Bay, FL 32905**, hereinafter referred to as **CONSULTANT**.

### RECITALS

**WHEREAS**, the COUNTY desires professional engineering services, as described in RFQ #7-21-09 (attached hereto as Exhibit I) for the following septic to sewer areas: North Merritt Island, South Merritt Island and Little Hollywood, and as found in Exhibit I: PART I. GENERAL INTRODUCTIONS - I. INTRODUCTION; and

**WHEREAS**, the COUNTY issued Request for Qualifications (Exhibit I) for professional services and has selected CONSULTANT to perform these services pursuant to the provisions of section 287.055, Florida Statutes and Brevard County Policy BCC-26 (Acquisition of Consultant Professional Services); and

**WHEREAS**, The Brevard County Natural Resources Management Office is administering the Indian River Lagoon Restoration Program (hereinafter "Program").

**WHEREAS**, a goal of the Program is the elimination of certain septic tanks by extending wastewater collection to certain areas of Brevard County.

**WHEREAS**, Brevard County Utility Services is assisting the Program by contracting with consulting engineers through the Request for Qualifications process, and for the consulting engineers to manage and supervise the design and construction of those wastewater collection extensions;

**NOW THEREFORE**, in consideration of the mutual promises hereinafter contained, the Parties agree as follows:

## **1. RECITALS.**

The above recitals are incorporated into this Contract by this reference.

## **2. ADMINISTRATION.**

This Contract is administered by the Brevard County Utilities Services Department, a department of the Brevard County Board of County Commissioners, hereinafter referred to as the Department.

## **3. DEFINITIONS.**

3.2. Consumer Price Index (CPI). Where this term is used, it refers to the index in Administrative Order AO-40 (copy available upon request), as it may be amended from time to time. This rate is currently the annual consumer price index for All Urban Consumers, U.S. City Average, all items 1967-100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

3.3. Date of Execution. This contract's date of execution is the date last signed by the Parties.

3.4. Master Services Contract. A contract that authorizes Task Orders to be issued under the terms and conditions of the Master Service Contract.

3.5. Task Order. A defined term for all work pursuant to this contract ordered on a separate document by COUNTY from CONSULTANT that describes a finite amount of work for a finite payment. By this reference, all Task Orders written pursuant to this contract are incorporated to this contract as an addendum and are subject to the terms and conditions of this Contract. For this Contract, whether described as a Task Order, Purchase Order or Work Order, all such orders shall be treated as Task Orders and subject to the provisions in this Contract relating to Task Orders.

3.6. Professional Services. Those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined in Florida law, or those services performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his/her professional employment or practice.

3.7. Purchase Order. The COUNTY's document used to authorize a purchase transaction with a CONSULTANT, generally used for one-time purchases or open framework purchase orders, which contains provisions for goods and/or services ordered, applicable terms as to payment, discounts, date or performance, transportation, and other factors or conditions relating to the transaction. Acceptance of a purchase order by a vendor shall constitute a contract, except in instances in which a purchase order is used only as an internal encumbrance document in SAP. For purposes of this contract, except for the purchase order issued in SAP for this Master Contract, or any internal encumbrance documents issued in SAP, all other purchase orders issued under this Contract shall be governed by the terms for Task Orders in this Contract.

3.8. Work. A general term for the goods and/or services provided by the CONSULTANT under this Contract.

3.9. Work Order. A work order under this Contract is another term for a Task Order, and shall be governed by the terms for Task Orders in this contract.

3.10. Work Product. A defined term for all material, which may be copyrighted, or trademarked, which CONSULTANT creates for COUNTY under a task order as a task order deliverable and including, but not limited to, reports, tracing, plans, specifications, data, maps, contract documents, drawings, writings, surveys, photographs, video, and other products created in the process of creating the task order deliverables. As a task order deliverable, work product is to be provided to the County for its use.

#### **4. SCOPE OF PROFESSIONAL SERVICES.**

4.1. Professional engineering services are required to perform project design, permitting, bidding assistance, and construction administration services for the following septic-to-sewer areas as referenced in Task Order No. 1, (attached hereto as Exhibit II):

1. North Merritt Island (Exhibit II, Attachment A)
2. South Merritt Island (Exhibit II, Attachment B)
4. Little Hollywood (Exhibit II, Attachment C)

Further detail of the scope of the professional engineering services requested are to evaluate the gravity sewer versus vacuum sewer analysis, design the improvements, prepare bid documents, obtain required permits, provide bidding assistance, assist in construction contractor selection, provide construction management services, review shop drawings, answer contractor requests for information, authorize pay requests, prepare record drawings, provide operation and maintenance manuals, assist with start-up, and certify completion of construction. The Request for Qualifications is incorporated and attached hereto as Exhibit I. The CONSULTANT's Task Order No. 1 is incorporated and attached hereto as Exhibit II.

#### **5. STANDARD OF CARE REQUIRED FOR PROFESSIONAL SERVICES.**

5.1. Upon receipt of Notice to Proceed, CONSULTANT agrees to perform professional services associated with the requested work in accordance with this contract and the negotiated terms of the applicable Task Order(s), in a manner consistent with the professional skill and degree of care and diligence ordinarily provided by other similar professionals in the same or similar locality under the same or similar circumstances and as further set forth herein.

5.2. CONSULTANT further agrees that the standard of care required of CONSULTANT to provide the professional services under this Contract includes, and that the CONSULTANT shall:

5.2.1. Ensure the adequacy of work provided under this Contract with appropriate due diligence and a reasonable standard of care in a manner that adequately captures scope, complexity and design constraints. This includes, but is not limited to, environmental, geotechnical, architectural, landscape architecture, surveying, and appropriate site visits.

5.2.2. Correct any errors and omissions, and prepare any necessary plan revisions not involving a change in the scope of the work required, that may be required because work was found unsatisfactory, substandard, defective and/or not otherwise not in compliance with the standard of care as set forth in this Contract at no additional cost. This remedy shall be cumulative to all other remedies available under law.

5.2.3. Be responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports, and other services furnished by CONSULTANT under this CONTRACT. CONSULTANT shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, specifications, reports, and other services.

5.2.4. Be responsible for recruiting, hiring, training, supervising, disciplining and discharging personnel necessary to maintain an adequate staff of experienced and qualified personnel licensed in the State of Florida to perform all professional services contemplated by this contract.

5.2.5. Comply with federal, state and local laws, codes and ordinances applicable to the work. Failure or inability on the part of CONSULTANT to have

complete knowledge and intent to comply with such law, rules, and regulations shall not relieve CONSULTANT from its obligation to completely perform any task assigned pursuant to this Contract.

5.2.6. Cooperate fully with COUNTY in the scheduling and coordination of all phases of the work.

5.2.7. Cooperate and coordinate with other COUNTY CONSULTANTS, as specified in the Work Order.

5.2.8. Exercise an appropriate Quality Control Program to provide adequate oversight and supervision over all of CONSULTANT's sub-CONSULTANTS.

5.2.9. Report the status of the work to the COUNTY upon request and hold pertinent data, calculations, field notes, records, sketches and other projects open to the inspection of the COUNTY or its authorized agent at any time.

5.2.10. Submit for COUNTY review design computations, sketches and other data representative of the work's progress as specified in the applicable Task Order. Submit for COUNTY approval the final work upon incorporation of any modifications requested by the COUNTY during any previous review. Any COUNTY approval of the CONSULTANT'S plans, design, or specifications shall not be deemed to diminish the standard of care or skill required of the CONSULTANT.

5.2.11. Confer with COUNTY during the further development and implementation of improvements for which the CONSULTANT has provided design or other services.

5.2.12. Interpret plans and other documents.



5.2.13. Meet project deliverable dates established in each individual Task Order

5.2.14. Prior to final approval of the work by COUNTY, conduct and complete a preliminary check of any construction or other documents through any review committee, third party CONSULTANT or any county, city, state or federal agency from which a permit or other approval is required. Any approval obtained from COUNTY or any other agency shall not be deemed to diminish or discharge the standard of care or warranty of CONSULTANT as provided for in this Contract.

## **6. USE OF TASK ORDERS.**

6.1. Generally. All professional services or work provided by CONSULTANT for COUNTY shall be identified in written Task Orders and performed to the current professional standards of the applicable discipline and as further set forth in the standard of care section. Task Orders shall entail a description of services to be performed, a statement of fees, a proposed schedule for compensation and a projected schedule for completion of the work to be performed by CONSULTANT.

6.2. Effectiveness. A Task Order shall not give rise to any contractual rights until approved by COUNTY in the form of a written Notice to Proceed signed by the Chair of the Board of County Commissioners or other authorized representative of the COUNTY, where approved by Board action. All written Notices to Proceed and specific Task Orders are incorporated to this Contract by this reference and shall constitute a contract addendum to this Contract.

6.3. Order of Work. COUNTY shall have the sole right to determine which units or sections of the work CONSULTANT shall proceed on and in what order. Should a Task Order revise the scope, cost or schedule, the CONSULTANT shall submit such revisions in scope, cost or schedule in writing to COUNTY for review and

approval as a modification by COUNTY prior to commencing the revision. CONSULTANT waives any right to make a claim based upon a revision if such notice was not provided.

6.4. COUNTY Assistance. Where appropriate, COUNTY shall make COUNTY personnel with knowledge of the operation of COUNTY as it relates to the Task Order available to assist CONSULTANT. COUNTY shall make its facilities accessible to CONSULTANT, where feasible, and as required for CONSULTANT's performance of services under this Contract. In those instances where CONSULTANT may deem it necessary to obtain access or entry upon privately owned property in its performance of Contract, CONSULTANT may request assistance from COUNTY in facilitating such access. COUNTY shall assist as is feasible.

## **7. MODIFICATIONS.**

7.1. CONTRACT Modifications. The terms of this Contract may be modified upon the mutual agreement of the Parties in writing executed by both Parties with the same formality as herewith.

### **7.2. Task Order Modifications.**

7.2.1. All modifications to a Task Order must be in writing and approved by both Parties. CONSULTANT shall not perform any additional work or services without first receiving signed written authority from COUNTY specifying said services to be performed and a written "Notice to Proceed" from the COUNTY.

7.2.2. The Parties agree that COUNTY is not obligated to issue any Task Order for any specific project or part thereof. The Parties agree COUNTY may modify the scope of a project in a Task Order as the COUNTY deems appropriate, including a commensurate increase or decrease in the fee.

7.2.3. In the event CONSULTANT experiences any delay resulting from circumstances beyond its control, or a change in the scope of work which will result in an increase or decrease in a Task Order's price or time, CONSULTANT shall provide immediate notice to the COUNTY for consideration of additional compensation or time. Additional compensation shall be limited to direct costs resulting from the delay or change in work.

## **8. TERM.**

8.1. This CONTRACT is related to only work performed within the Introduction and Scope of Work per RFQ #7-21-09, specifically toward the North and South Merritt Island and Little Hollywood septic-to-sewer areas. Terms of this contract are defined under section 287.055(2)(g), Florida Statutes and Brevard County Commission Policy 26.

8.2 Survival of Provision for Services related to Legal Purposes. During the term of this Contract, the Parties agree that COUNTY may issue a task order for CONSULTANT to appear or to provide services as an expert or fact witness for any legal or court proceeding related to work performed under this CONTRACT at the hourly rate delineated in this contract. Additionally, for a period of five years after the expiration of this contract or any task order, upon COUNTY request, CONSULTANT expressly agrees that it will provide services as an expert or fact witness for any legal or court proceeding related to work performed under this Contract at the rates as follows. For such services provided after this contract is expired, the Parties agree CONSULTANT may increase its hourly rate for said services over this CONTRACT's rate by no more than the annual increase in the consumer price index adopted by COUNTY pursuant to Administrative Order AO-40 (available upon request) for each year the contract has lapsed. This provision, and any provision necessary to enforce it, survives contract expiration or termination for a period of five years.

## **9. TIME OF COMPLETION.**

9.1. CONSULTANT shall commence work upon receipt of a written notice to proceed and an executed Task Order or Purchase Order issued by COUNTY subsequent to the execution of this CONTRACT. CONSULTANT shall complete the work within the time stated in the Task Order. The CONSULTANT acknowledges that time is of the essence for all work performed under this Contract.

9.2. Upon request, COUNTY shall grant a reasonable extension of time in the event there is a delay on the part of the COUNTY in fulfilling its obligations under the CONTRACT which causes a delay to CONSULTANT in its performance of the services or work.

### **9.3. Force Majeure.**

9.3.1. Neither Party shall be liable for its failure to perform hereunder if its performance is rendered impossible or delayed by any unforeseen act, event or condition beyond its reasonable control which by the exercise of due diligence it shall be unable to overcome. Such unforeseen acts, events or conditions shall include, but not be limited to the following: Acts of God, hurricanes, tornado, lightning, or earthquake; strikes or lockouts; acts of war, civil insurrection, riots or terrorism; fire or flood not caused by the Party unable to perform; change in law not due to improper conduct; pandemics or quarantines; or to any negligent or intentional act or omission on the part of the Party unable to perform.

Notwithstanding anything in this CONTRACT to the contrary, the term "Force Majeure" does not include and a Party shall not be excused from performance under this CONTRACT for events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance or other expenses of performing the services hereunder.

9.3.2. The failure to perform must occur directly, exclusively and contemporaneously with the Force Majeure event. Should the CONSULTANT

be obstructed or delayed in the prosecution or completion of its services or work as a result of said unforeseeable causes beyond the control of the CONSULTANT and not due to its own fault and neglect, CONSULTANT shall, within 10 hours of the time the delay becomes apparent, notify the COUNTY of such delay in writing stating the cause or causes thereof, failing which the CONSULTANT shall waive any right the CONSULTANT may have to request a reasonable extension of time to complete the work required by the Task Order. Such reasonable extensions of time to complete the Task Order shall be the sole remedy of the CONSULTANT for such delays, and the CONSULTANT will not be entitled to any damages or any claim for extra compensation.

## **10. COMPENSATION AND REIMBURSABLE COSTS.**

10.1. GENERAL. As consideration for providing professional services, COUNTY agrees to pay and CONSULTANT agrees to accept, a fee for services. The fee for services in the applicable Task Order and subsequent Task Orders, if any, is the only compensation to which CONSULTANT is entitled, unless pre-approved reimbursable costs are listed in the task order. CONSULTANT shall include in the fee for services all its' office overhead, employee benefits, normal business travel, and other support for overhead services required for performance of any and all duties or obligations described in the applicable Task Order.

10.2. Fee for Services. COUNTY may specify one or both fee options below in an approved Task Order, as is applicable to the situation.

10.2.1. Lump Sum Fee. At the option of COUNTY, instead of an Hourly rate, the Parties may mutually agree upon a lump sum fee for any requested portion of work in a written Task Order.

10.3. Reimbursable Expenses or Costs. CONSULTANT shall be compensated for certain work-related expenditures not covered by the fee for service only if (1) the

reimbursable expenses are pre-approved by specification in the Task Order; or (2) CONSULTANT has obtained written pre-approval from COUNTY prior to incurring the expense. If an expense is not pre-approved by COUNTY, the CONSULTANT will not be entitled to be compensated by COUNTY for such expense. When requesting COUNTY pre-approval for an expense, CONSULTANT must provide a written justification for the expenses accompanied by copies of invoices, receipts, requisitions, and/or estimates (if actual expense cannot be provided until actual cost is incurred) to document the need for the expense. COUNTY, upon receipt of satisfactory documentation, will provide CONSULTANT with its written decision on approval or rejection of said expenses. CONSULTANT must submit the final receipts, invoices, etc., for expenses incurred in order to be reimbursed by COUNTY. COUNTY will reimburse CONSULTANT for pre-approved expenses at actual cost(s) (no markup or percentage increase will be paid by the COUNTY). Types of reimbursable expenses may include:

10.3.1. Documents and Incidentals. Expenses for document reproduction or other incidental expenses. These expenses shall be reimbursed on a direct cost basis to cover labor and expenses.

10.3.2. Contractual costs. SUBCONSULTANTS shall be reimbursed at the expense of such cost. Requests for copies of invoices, receipts must accompany reimbursement of Contractual costs, purchase requisitions, etc. to document the charges.

10.3.3. Equipment Costs. Equipment shall be reimbursed at the cost of rental or purchase cost. Equipment purchased is the property of the COUNTY and must be returned upon the completion of the related Task or Purchase Order.

10.3.4. Travel Costs. The Parties agree that travel costs for normal business travel necessary under the performance of this contract is included in

the CONSULTANT's hourly fee. COUNTY, in its sole discretion, may approve a CONSULTANT's request for reimbursement for special travel required under extenuating circumstances as part of a Task Order. If approved, such travel shall be reimbursed at the same rate as for COUNTY employees in accordance with the most current version of County Administrative Order AO-21, entitled "Travel", which administrative order is incorporated to this contract by this reference, and section 112.061 Florida Statutes. A copy of AO-21 is available upon request. All CONSULTANT requests for special travel must be documented on a State of Florida Travel Voucher with appropriate receipts. Without prior written approval, COUNTY is not responsible for reimbursing CONSULTANT for said travel.

10.3.5. Permits, Licenses and Fees. Generally, unless specifically authorized, permits, fees and licenses necessary for performance of work pursuant to this Contract will not be waived by COUNTY, and CONSULTANT shall be responsible for obtaining, and shall pay for their own professional permits, fees, and licenses, as required. If authorized, and not treated as a reimbursable cost, the COUNTY shall pay directly to the governing authority, the cost of permits, fees, and/or licenses required for completion of the scope of services for a particular Task Order.

10.3.6. Other miscellaneous expenses previously authorized in writing by the COUNTY.

## **11. BILLING, PAYMENT AND PARTIAL PAYMENTS**

11.1. General. COUNTY will make payment to CONSULTANT through County Finance according to Brevard County Administrative Order AO-33 (copy available upon request) and Florida's Local Government Prompt Payment Act, Chapter 218, Part VII, Florida Statutes, including provision of an IRS Form W-9. CONSULTANT payments are subject to COUNTY'S right to withhold any amounts reasonably necessary to

complete or correct substandard work or work not in compliance with the terms of this Contract. The County will not honor any claim for services rendered by CONSULTANT that is not specifically provided for in this Contract or a Task Order under this Contract.

**11.2. Process for Payment of Invoices.**

11.2.1. CONSULTANT shall submit invoices for payment to COUNTY either (a) on a monthly basis or (b) contemporaneously with services rendered pursuant to the timeline specified in each Task Order. The CONSULTANT's request for payment shall be in the form and in the manner, required by the COUNTY, and shall relate to work performed since the last invoiced work. The COUNTY may require supplemental and accompanying data to support CONSULTANT's request for payment.

11.2.2. The amount of each invoice submitted shall be the amount due for all services performed to date in connection with authorized work, as certified by the CONSULTANT. Each invoice shall include only authorized work and must reference the particular Task Order that authorized the services performed. Invoices for work other than lump sum shall include a breakdown for each part of the work billed for each item and personnel. CONSULTANT shall include with its invoice, copies of all invoices paid by the CONSULTANT for expenses.

**12. DISPUTE RESOLUTION.**

12.1. If COUNTY objects to all or any portion of an invoice, COUNTY shall so notify CONSULTANT, and indicate in writing what corrective action is required of CONSULTANT. If a dispute over an invoice occurs, the Parties will work to resolve the dispute in accordance with Administrative Order AO-33 (copy available upon request) and section 218.76, Florida Statutes.

12.2. To the extent the COUNTY requests CONSULTANT to perform services that it believes are not described in the Task Order, or with respect to which there is a



disagreement between the Parties as to whether or not the services are already required by a particular Task Order, then CONSULTANT shall provide written notice to COUNTY that CONSULTANT of said issue, and that CONSULTANT will follow COUNTY's written directive provided it is without prejudice to CONSULTANT's right to seek additional compensation from COUNTY. CONSULTANT shall only provide such service upon receipt of a written COUNTY directive/Notice to Proceed to explicitly perform such service. The COUNTY's delivery of such written directive/Notice to Proceed following CONSULTANT's notification shall be without prejudice to COUNTY's right to maintain that such services do not constitute the basis for additional compensation under the applicable Task Order.

12.3. Waiver. The waiver by either Party of the other Party's obligations or duties under this CONTRACT shall not constitute a waiver of any other obligation or duty of the other Party under this CONTRACT, nor shall a waiver of any such obligation or duty constitute a continuing waiver of that obligation or duty.

### **13. OWNERSHIP AND REUSE OF WORK PRODUCT.**

13.1. COUNTY agrees to furnish to CONSULTANT, upon request, for inspection and copying, any known documents or data available in the COUNTY'S files pertaining to the work to be performed under this Contract which may be reasonably required by CONSULTANT to be performed under this Contract. To the extent COUNTY provides such documents or data to CONSULTANT for CONSULTANT's use in a project, COUNTY agrees to obtain, or cause to be obtained, any releases, permits or authorization necessary for the use of the documents or data. The COUNTY agrees to hold CONSULTANT harmless for any claims arising with respect to COUNTY's releases, permits or authorization for the use of the documents.

13.2. To the extent CONSULTANT provides Work Product that CONSULTANT did not create, to COUNTY for its use, CONSULTANT agrees to obtain, or cause to be obtained, any releases, permits or authorization necessary for the use of the Work

Product by COUNTY to the same extent that CONSULTANT is required to provide COUNTY in sections 13.3 and 13.4. CONSULTANT agrees to be responsible for any claims arising with respect to such use of Work Product provided by CONSULTANT. CONSULTANT agrees that its proposal for this Work Product factored the costs of this section into its proposal and that no additional compensation is owed by COUNTY.

13.3. To the extent CONSULTANT creates Work Product under this Contract for COUNTY, then to the extent permissible under the law, the Parties agree the Work Product is specially ordered or commissioned as a "work for hire" under 17 United States Code section 101. CONSULTANT agrees that COUNTY is the exclusive owner of all Work Product created under this paragraph, without restrictions or limitations upon its use. When each individual section of work requested pursuant to this sub-section is complete, all of the work products shall be delivered to the COUNTY for its use. There shall be no additional compensation for the rights and property granted under this paragraph.

13.4. To the extent CONSULTANT creates Work Product for COUNTY that falls outside the definition of a "work for hire" under 17 United States Code section 101, by this paragraph, CONSULTANT grants to COUNTY a royalty-free, world-wide, nonexclusive, irrevocable, unlimited license right in the Work Product created by CONSULTANT for COUNTY pursuant to the CONTRACT, without restrictions or limitations upon its use. Such license includes an express right for the COUNTY to further sub-license the Work Product, and to create derivative works, without restriction.

13.5. To the extent CONSULTANT creates Work Product for COUNTY that depends upon original notes, working documents, design calculations, computations and plans, COUNTY shall be entitled to a copy of such materials upon request, and further provided said materials shall not be destroyed without the prior written approval of COUNTY.

13.6. For Work Product CONSULTANT provides to COUNTY where a photograph or video of a person with an identifiable face appears, CONSULTANT will provide COUNTY with a standard commercial use modeling release, in writing (a sample model release is attached as Attachment C). Faces which are blurred to be unrecognizable do not require such a modeling release. The release will include the model's name, age, and date of birth.

13.7. Reuse of Work Products.

13.7.1. CONSULTANT may not reuse plans, specifications, or reports specifically developed by CONSULTANT for COUNTY without express written permission from COUNTY.

13.7.2. In accordance with section 287.055(10), Florida Statutes, and section 13.3 of this contract, the COUNTY may reuse any plans, specifications, or reports provided under this CONTRACT, subject to any conditions in the task order.

#### **14. NOTICES AND AUTHORIZED REPRESENTATIVES.**

14.1. Authorized Representatives. The Parties agree that in order to facilitate the orderly and efficient implementation of any Task Order, each Party shall appoint an authorized representative(s) for such Party. The COUNTY's representative shall have the authority to transmit instructions, receive information, and interpret and define the COUNTY's policies and decisions pertinent to the work covered by this Contract as long as such transmissions do not result in an increase in the cost of or time to perform work. The Parties understand and agree that only the Board of County Commissioners, County Manager, Assistant County Managers, or Department Director have the authority to issue Task Orders, or approve changes or modifications to this Contract or a Task Order. The CONSULTANT's representative shall be authorized to act on behalf of CONSULTANT regarding all matters involving the conduct of its performance under this Contract. The Parties representatives will be identified by separate letter, which is

attached and incorporated to this Contract as an Addendum. Either Party will have the right to change its authorized representative(s), or to add representatives, from time to time, throughout the Contract, by giving written notice to the other Party in accordance with the Notice Provisions below.

14.2. Notices. All notices required or permitted under this Contract and any written consents or approvals required shall be in writing and are in effect upon receipt. All notices for renewal, legal claims, or termination must be transmitted either by personal hand delivery; United States Postal Service (USPS), certified mail return receipt requested; or, overnight express mail delivery. Other notices, such as signed notices to proceed, may be transmitted by E-mail to the authorized representative. The addresses set forth below for the respective Parties shall be the places where notices shall be sent, unless prior written notice of change of address is given.

14.3. The Parties' designated representatives and their respective addresses for purposes of Notice for this Contract are as follows:

**COUNTY**

Edward Fontanin  
2725 Judge Fran Jamieson Way, A-213  
Viera, FL 32940  
Edward.Fontanin@brevardfl.gov  
321.633.2091

**CONSULTANT**

Thomas S. Brzezinski  
201 North Franklin Street, Suite 1350  
Tampa, FL 33602  
tbrzezinski@wadetrim.com  
813.480.9000

**15. AUDIT RIGHTS AND PUBLIC RECORDS.**

15.1. In performance of this Contract, CONSULTANT shall keep books, records, and accounts of all activities related to this Contract in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by CONSULTANT in conjunction with this Contract, and the performance of this Contract, shall be open to inspection during regular business hours

by an authorized representative of COUNTY. The COUNTY or any of its duly authorized representatives reserves the right to audit the CONSULTANT's records related to this Contract at any time during the performance of this Contract and for a period of five years after final payment is made, or otherwise required by law.

15.2. Upon completion of the Contract, the CONSULTANT shall transfer, at no cost to the COUNTY, all public records in possession of the CONSULTANT or keep and maintain public records required by the COUNTY to perform the service. If the CONSULTANT transfers all public records to the COUNTY upon completion of the Contract, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Contract, the CONSULTANT shall meet all applicable requirements for retaining public records, and shall retain all documents, books and records for a period of five (5) years after termination of this Contract, unless such records are exempt from section 24(a) of Article 1 of the State Constitution and Chapter 119, Florida Statutes. All records stored electronically must be provided to the COUNTY, upon request from the COUNTY's custodian of public records, in a format that is compatible with the information technology systems of the COUNTY.

15.3. All records or documents created by the COUNTY or CONSULTANT in connection with this Contract are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. It is CONSULTANT'S duty to identify any information in records created by CONSULTANT which it deems is exempt or confidential from public records laws under Florida or federal law and identify the statute number which requires the information be held exempt. All records stored electronically must be provided to COUNTY in a format compatible with the information technology systems of COUNTY.

15.4. CONSULTANT shall ensure that public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed,

except as authorized by law, for the duration of the Contract and following termination of the Contract if the CONSULTANT does not transfer the records to COUNTY. In lieu of retaining all public records upon termination of this Contract, the CONSULTANT may transfer, at no cost to the COUNTY, all public records in possession of the CONSULTANT. If the CONSULTANT transfers all public records to the COUNTY upon termination of the Contract, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

15.5. Pursuant to Section 119.0701, Florida Statutes, a request to inspect or copy public records relating to this Contract must be made directly to COUNTY. If COUNTY does not possess the requested records, COUNTY shall immediately notify the CONSULTANT of the request and if CONSULTANT possesses the records, CONSULTANT must provide the records to the COUNTY or allow the records to be inspected or copied within twenty-four (24) hours (not including weekends and legal holidays) of the request so COUNTY can comply with the requirements of Sections 119.07, Florida Statutes. The CONSULTANT may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County Administrative Order AO-47, incorporated herein by this reference. A copy of AO-47 is available upon request from the COUNTY'S public records custodian designated below.

15.6. If CONSULTANT possesses the records, but fails to provide the requested public records to COUNTY within a reasonable time, pursuant to section 119.0701 and 119.10, Florida Statutes, the CONSULTANT may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties. The CONSULTANT'S failure to comply with public records requests is considered a material breach of this Contract and grounds for termination.

15.7. Should COUNTY face any legal action to enforce inspection or production of the records within CONSULTANT'S possession and control, CONSULTANT agrees

to indemnify COUNTY for all damages and expenses, including attorney's fees and costs. CONSULTANT shall hire and compensate attorney(s) to represent CONSULTANT and COUNTY in defending such action. CONSULTANT shall pay all costs to defend such action and any costs and attorneys fees awarded pursuant to Section 119.12, Florida Statutes.

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KATIE BALLAGH, BREVARD COUNTY GOVERNMENT CENTER, 2725 JUDGE FRAN JAMIESON WAY, BUILDING a, SUITE 213, VIERA, FLORIDA 32940, 321.633.2089, KATIE.BALLAGH@BREVARDFL.GOV.**

**16. UNAUTHORIZED ALIEN WORKERS AND EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY).**

16.1. Unauthorized Alien Workers. The COUNTY will not intentionally award publicly-funded contracts to any CONSULTANT who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 United States Code Section 1324 (a) of the Federal Immigration and Nationality Act. The COUNTY shall consider a CONSULTANT's intentional employment of unauthorized aliens as grounds for immediate termination of this Agreement.

16.2. The CONSULTANT 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 CONSULTANT during the term of the Contract and shall expressly require any SUBCONSULTANTS 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 SUBCONSULTANT during the Contract term. All CONSULTANTS shall meet this requirement unless they are a sole proprietor who does not hire employees and therefore is not required to file a Department of Homeland Security Form I-9 or the contract is being executed with a company based outside of the United States of America and does not have a corporation or office within the United States of America and does not employ United States of America citizens.

16.3. Upon request, the CONSULTANT agrees to provide a signed copy of the E-Verify Memorandum of Understanding signed by CONSULTANT and the Department of Homeland Security.

16.4. CONSULTANT agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its SUBCONSULTANTS as provided above, and to make such records available to the COUNTY consistent with the terms of CONSULTANT's enrollment in the program. This includes maintaining a copy of proof of CONSULTANT's and any SUBCONSULTANTS' enrollment in the E-Verify Program.

16.5. Compliance with the terms of this section is made an express condition of this Contract and the COUNTY may treat a failure to comply as a material breach of this Contract.

16.6. A CONSULTANT who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-Verify program, the CONSULTANT hires or employs a person who is not eligible for employment.

16.7. Nothing in this section may be construed to allow intentional discrimination of any class protected by law.



## **17. SUBCONTRACTING.**

The CONSULTANT shall not subcontract, assign, or transfer any work under this Contract without the written approval of the COUNTY, including a change of sub-CONSULTANT. When applicable, the CONSULTANT shall cause the names of any subcontracted firms responsible for major portions (or separate specialty) of the work to be inserted in the task order. CONSULTANT shall remain, at all times, liable for the proper performance and completion of all work and other services required hereby, including supervision and administration of all such sub-contracted personnel, firms and companies, and including any errors or omissions by said sub-CONSULTANTS. The CONSULTANT shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, specifications, reports, and other services performed by SUBCONSULTANT.

## **18. COVENANT AGAINST CONTINGENT FEES.**

As required by section 287.055(6), Florida Statutes, the CONSULTANT warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that CONSULTANT has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. For any breach or violation of this provision, the COUNTY shall have the right, but not the duty, to terminate this Contract, without liability, and, at its discretion, to deduct from the contract price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any damages and shall be responsible for reporting the details of such breach or violation to the proper legal authorities where and when appropriate.

## **19. TERMINATION OF CONTRACT.**

19.1. Termination for Convenience. Either Party may terminate this Contract for convenience upon sixty (60) calendar days written notice to the other Party. Such termination is effective upon the Party's receipt of the Notice of Termination. Upon receipt of such a notice, the Parties will discontinue all services affected, unless the notice directs otherwise, and payment will be made as directed below. If CONSULTANT terminates Contract for convenience, CONSULTANT will complete any outstanding task orders.

19.2. Termination for Failure to Perform. If a Party is failing to perform, the other Party will issue a notice of failure to perform to the failing Party. The notice shall provide the failing Party with thirty (30) calendar days from the date the notice is received in which to correct such deficiencies as noted in said notice. If the Party fails to correct such deficiencies to the satisfaction of the other Party within the stated time period, then the Party may terminate the Contract upon sixty (60) calendar days written notice to the other Party for failure to perform. In the case of a termination notice issued by CONSULTANT, the CONSULTANT may discontinue providing service to COUNTY, and shall be paid for prior satisfactory services performed as per the applicable Task Order. In the case of termination notice issued by COUNTY, COUNTY may take over the work and cause it to be performed to completion by CONTRACT or otherwise. In such case, the COUNTY preserves all rights and remedies available, including, but not limited to, the right to recover COUNTY's additional cost incurred in securing complete performance. The rights and remedies of COUNTY provided in this clause are in addition to any other rights and remedies provided by law or under this CONTRACT. If, after COUNTY notice of termination for failure to fulfill contractual obligations, it is determined that CONSULTANT had not failed the contractual obligations, the termination shall be deemed to be affected for the convenience of COUNTY.

19.3. Upon termination for any reason, the Parties agree that any work completed, or services provided by CONSULTANT prior to the date of termination shall become property of COUNTY. Upon COUNTY request, CONSULTANT shall deliver to COUNTY Work Product as may have been accumulated by CONSULTANT in performing this CONTRACT, whether completed or in process.

19.4. Payment on Termination. In the event of termination by COUNTY, the COUNTY'S sole obligation to CONSULTANT shall be payment for those portions of satisfactorily completely performed work previously authorized by approved Task Order. The COUNTY shall not be obligated to pay for any services performed after CONSULTANT has received the final notice of termination. Such payment shall be determined on the basis of the hours of work performed by CONSULTANT, or the percentage or work complete as estimated by CONSULTANT and agreed upon by COUNTY up to the time of termination. In the event of such termination, COUNTY may, without penalty or other obligation to CONSULTANT, elect to employ other persons to perform the same or similar services. In the event of deficient professional services, COUNTY shall not pay for the deficient services, except for that portion, if any, of the performed work which is used or useful by any other CONSULTANT retained by COUNTY to finish the work to the extent that COUNTY does not incur additional costs over those set forth in the CONSULTANT'S canceled Work Order.

## **20. ASSIGNMENT.**

The COUNTY and CONSULTANT each bind its respective entity and its successors, legal representatives, and assigns to the other Party to this CONTRACT, and to the partners, successors, legal representatives, and assigns of such other Party, and in respect to all covenants of this CONTRACT. Neither Party shall assign or transfer their interest in this CONTRACT without the prior written consent of the other Party. In the event that the CONSULTANT changes its name, merges with another company, becomes a subsidiary or makes other substantial change in structure or in

principals, the COUNTY reserves the right to terminate this Contract subject to the terms prescribed above.

**21. ATTORNEY'S FEES, GOVERNING LAW AND VENUE.**

In the event of any legal action between the Parties arising out of this Contract, each Party shall bear its own attorney's fees and costs. This Contract, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida. Venue for any legal action brought by any Party to this Contract to interpret, construe or enforce this Contract shall be in a court of competent jurisdiction in and for Brevard County, Florida, and the Parties agree any trial shall be non-jury. CONSULTANT consents and waives any objection or defenses relating to Florida state court having jurisdiction over any dispute or claim arising out of this agreement and consents to process being served upon its Florida registered agent. CONSULTANT expressly waives removal of any claim or action arising under this agreement to federal court.

**22. INDEMNIFICATION AND INSURANCE.**

22.1. CONSULTANT shall hold COUNTY harmless against any and all claims for and related in any way to bodily injury, sickness, disease, death, personal injury, damages to property of any kind (including but not limited to loss of use of any property or assets resulting therefrom), schedule delay claims of any kind, including but not limited to loss of efficiency or productivity, arising out of or resulting from the performance of the products or services for which COUNTY is contracting hereunder, to the extent caused by the negligent acts, recklessness, or intentional wrongful conduct of CONSULTANT, or any of their agents or employees, including SUBCONSULTANTS. Such negligent acts by CONSULTANT include, but are not limited to, any errors or omissions in the CONSULTANT'S services, including but not limited to design services.

22.2. The CONSULTANT agrees to fully indemnify COUNTY and pay the cost of COUNTY's legal defenses, including fees of attorneys as may be selected by COUNTY, for all claims described in the hold harmless clause above. Such payment on behalf of the COUNTY shall be in addition to any and all other legal remedies available to the COUNTY and shall not be considered to be the COUNTY'S exclusive remedy. It is agreed by the Parties hereto that specific consideration has been received under this Contract for this hold harmless/indemnification provision.

22.3. Notwithstanding any other provisions of this Contract, this indemnification section applies to both COUNTY and third-party claims and shall survive the termination of this Contract. Nothing in this section is intended to nor shall it constitute a waiver of the sovereign immunity of Brevard County.

22.4. PURSUANT TO SECTION 558.002 AND 558.0035, FLORIDA STATUTES, A DESIGN PROFESSIONAL WHO IS AN EMPLOYEE OR AN AGENT OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE IF CONSULTANT MAINTAINS THE PROFESSIONAL LIABILITY INSURANCE REQUIRED BELOW AND THE DAMAGES ARE SOLELY ECONOMIC IN NATURE AND DO NOT EXTEND TO PERSONAL INJURIES OR PROPERTY NOT SUBJECT TO THIS CONTRACT.

22.5. CONSULTANT shall procure and maintain, at their own expense and without cost to COUNTY, the following types of insurance. CONSULTANT shall be liable and responsible for errors and omissions in the performance of any and all contract responsibilities and shall carry professional liability insurance and indemnify the COUNTY against errors and omissions as specified herein below. The policy limits required are to be considered minimum amounts:

- General Liability Insurance policy with a \$1,000,000 combined single limit for each occurrence to include the following coverage: Operations, Products and

Completed Operations, Personal Injury, Contractual Liability covering this Contract, and Errors & Omissions.

- Auto Liability Insurance policy with includes coverage for all owned, non-owned and hired vehicles with a \$1,000,000 combined single limit for each occurrence.
- Professional Liability Insurance policy in the amount of \$1,000,000 per claim and \$3,000,000 in the annual aggregate covering the risk of errors and omissions in the professional services provided under this Contract. If such policy is written on a "claims made" (rather than "occurrence") basis, continuous coverage shall be maintained in effect from the date of commencement of services to a period of at least four (4) years beyond the termination or completion of services or until expiration of any applicable statute of limitations, whichever is longer.
- Workers' Compensation and Employer's Liability Insurance covering all employees of the CONSULTANT and SUBCONSULTANTS, as required by law.

22.6. CONSULTANT shall provide Certificates of Insurance to the COUNTY demonstrating that the aforementioned insurance requirements have been met prior to the commencement of work under this Contract. Insurance carriers providing coverage required herein must be licensed or authorized to conduct business in the State of Florida and must possess A.M. Best's Financial Strength Rating of A- Class VIII or better. The Certificates of Insurance shall indicate that the policies (except professional liability) have been endorsed to cover the COUNTY as an additional insured (a waiver of subrogation in lieu of additional insured status on the Workers' Compensation policy is acceptable) and that these policies may not be canceled or modified without thirty (30) days prior written notice to the COUNTY.

22.7. The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of CONSULTANT under the terms of the Contract. SUBCONSULTANT's insurance shall be the responsibility of CONSULTANT.

## **23. QUALITY CONTROL.**

23.1. The CONSULTANT agrees to a high level of quality control and accuracy in keeping with its standard of care. The COUNTY may request additional data collection or re-analysis of data at no expense to the COUNTY. If the original data collected and/or data analysis is later found to be accurate and reasonable, the CONSULTANT shall be compensated for the additional work in accordance the CONSULTANT's hourly rate for staff performing the work and providing verifiable documentation.

23.2. The CONSULTANT acknowledges that the COUNTY will periodically evaluate the CONSULTANT'S performance and that the evaluation will be used by the COUNTY in determining the CONSULTANT'S qualifications for future contracts with the COUNTY.

## **24. PUBLIC ENTITY CRIMES.**

24.1. 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/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a CONSULTANT, supplier, SUBCONSULTANT, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of threshold amount provided in Section 287.017 Florida Statutes for CATEGORY TWO for a period of 36 months from date of being placed on convicted vendor list.

24.2. CONSULTANT shall provide a fully executed Public Entity Crimes Affidavit in accordance with section 287.133, Florida Statutes, which when completed, is attached and incorporated to this Contract as Attachment A.

## **25. SCRUTINIZED COMPANIES LIST.**

25.1. CONSULTANT shall provide a fully executed Scrutinized Companies that Boycott Israel List Affidavit in accordance with section 287.135, Florida Statutes which is attached and incorporated to this Contract as Attachment B

25.2. The CONSULTANT certifies that it and its SUBCONSULTANTS are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes, the COUNTY may immediately terminate this Contract at its sole option if the CONSULTANT or its SUBCONSULTANTS are found to have submitted a false certification; or if the CONSULTANT, or its SUBCONSULTANTS are placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel during the term of this Contract.

25.3. If this Contract is for more than one million dollars, the CONSULTANT further certifies that it and its SUBCONSULTANTS 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, Florida Statutes.

25.4. Pursuant to Section 287.135, Florida Statutes, the COUNTY may immediately terminate this Contract at its sole option if the CONSULTANT, its affiliates, or its SUBCONSULTANTS are found to have submitted a false certification; or if the CONSULTANT, its affiliates, or its SUBCONSULTANTS are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the contract.

25.5. The CONSULTANT agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this contract.



25.6. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize these contracting prohibitions, this section shall become inoperative and unenforceable.

## **26. EQUAL OPPORTUNITY EMPLOYMENT.**

CONSULTANT agrees that it will not discriminate against any employee or applicant for employment for work under this CONTRACT because of race, color, religion, sex, sexual orientation, gender identity, age, national origin, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, sexual orientation, gender identity, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfers; recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

## **27. NON-EXCLUSIVE CONTRACT.**

The Parties acknowledge that this Contract is not an exclusive agreement and the COUNTY may employ other similar CONSULTANTS to furnish services for the COUNTY, as the COUNTY, in its sole discretion, finds is in the public interest. The COUNTY reserves the right to assign such work to the CONSULTANT as it may approve in the sole discretion of the COUNTY.

## **28. INDEPENDENT CONSULTANT.**

The COUNTY contracts for the services of the CONSULTANT as an independent CONSULTANT, and not as an employee. Nothing in this Contract shall be construed to create a partnership, joint venture or agency relationship between the Parties. Neither Party shall have the authority to enter into any Contract of any kind on behalf of the other, or to bind or obligate the other to any third party. As an independent

CONSULTANT, CONSULTANT is not entitled to any of the rights, privileges or benefits of COUNTY employees.

## **29. TRUTH-IN-NEGOTIATIONS.**

In accordance with the provisions of Chapter 287.055, Florida Statutes, for contracts exceeding Category Four of section 287.017, Florida Statutes, the CONSULTANT agrees to execute a truth-in-negotiations certificate and agrees the original Contract price and any additions may be adjusted to exclude any significant sums by which COUNTY determines the Contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the termination or expiration of this Contract. The truth-in-negotiations certificate at Attachment C, when completed, is attached and incorporated to this Contract by this reference.

## **30. CONFLICTS OF INTEREST.**

30.1. No officers, members or employees of COUNTY, and no members of its governing body, and no other public official of the governing body of the locality or localities in which services for the facilities are situated or carried out, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Contract, shall participate in any decision relating to this Contract which affects their personal interest, or have any personal or pecuniary interest, direct or indirect, in this Contract or the proceeds thereof.

30.2. A conflict of interest is any situation in which the CONSULTANT, its employees or SUBCONSULTANTS, are in a position to exploit their professional relationship with COUNTY in any way for their personal or corporate benefit. CONSULTANT is specifically aware of, and concurs with, the public need for COUNTY to prohibit any potential conflicts of interest that may arise as a result of execution of this Contract. CONSULTANT covenants that it has extensively reviewed all of its contracts,

letters of agreement, and any other indication of commitment on its behalf to perform professional services which could in any way present the reasonable possibility of an actual conflict of interest with COUNTY. CONSULTANT covenants that it presently has no conflict of interest and shall not acquire any interest, direct or indirect, which shall conflict in any manner or degree with the performance of services required to be performed under this Contract. CONSULTANT further covenants that in the performance of this Contract, CONSULTANT shall employ no person having any such interest. CONSULTANT shall disclose in writing to COUNTY any conflict of interest affecting CONSULTANT's services to COUNTY as soon as it becomes aware of the conflict.

### **31. ENTIRETY OF CONTRACT.**

This writing, together with Task Orders, the signed versions of the Attachments, any Addendums, and signed Notices to Proceed that may follow, embody the entire Contract and understanding between the Parties, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein. This Contract supersedes all prior agreements and negotiations respecting such matter.

### **32. INTERPRETATION.**

Both Parties have had the opportunity to consult with legal counsel and to participate in the drafting of this Contract. Consequently, this Agreement shall not be more strictly or more harshly construed against either party as the drafter.

### **33. SEVERABILITY.**

If a court of competent jurisdiction finds any sentence, provision, paragraph, or section of this Contract void or unenforceable, the remaining parts of this Contract shall continue to full force and effect as though such sentence, provision, paragraph, section had been omitted from this Contract. The Parties shall use their best efforts to

rehabilitate and replace the unenforceable provision or provisions of this Contract with lawful terms and conditions approximating the original intent of the Parties.

**34. FURTHER ASSURANCES.**

Each Party, without further consideration, shall take such action, execute and deliver such documents as the other may reasonably request to correct or effectuate the purpose of this Contract.

**35. COUNTERPARTS AND AUTHORITY.**

This Contract may be executed in counterparts all of which, taken together, shall constitute one and the same Contract. Each party represents that the person signing on its behalf has been fully authorized by all required action to sign on behalf of and to bind that party to the obligations stated herein.

(Signature Page Follows)

**IN WITNESS WHEREOF**, on the date last signed below, the Parties have caused this Contract to be executed by their duly authorized representatives.

ATTEST:

BOARD OF COUNTY COMMISSIONERS,  
BREVARD COUNTY, FLORIDA

  
Rachel Sadoff, Clerk of the Court

By: 

Kristine Zonka, Chair

As approved by the Board on: 12/21/2021

Reviewed for legal form and content:

  
Assistant County Attorney

Wade Trim, Inc.

By: 

Signature

Thomas S. Brzezinski

Executive Vice President

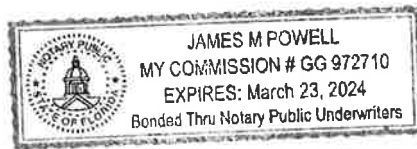
11/22/2021  
Date

STATE OF FL

COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 22<sup>nd</sup> day of NOV, 2021 by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced FL SIL as identification.

[Notary Seal]



James M Powell  
Notary Public

James M Powell  
Name typed, printed or stamped

My Commission Expires: 03/23/2024

## Attachment A

### Public Entities Crimes Affidavit

SWORN STATEMENT UNDER SECTION 287.133(3)(a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

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

1. This sworn statement is submitted by WADE TRIM,  
(Name of entity submitting sworn statement)  
whose business address is 201 N. FRANKLIN STREET, SUITE 1350  
TAMPA, FL  
and (if applicable) its Federal Employer Identification Number is 59-2417170.
2. My name is THOMAS S. BRZEZINSKI and my relationship to the entity named  
(Print name of individual signing) above is  
EXECUTIVE VICE PRESIDENT (relationship such as sole proprietor,  
partner, president, vice president).

3. I understand that a "public entity crime" as defined in paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any 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 an 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.

4. 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 an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1989, because of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

5. I understand that an "affiliate" as defined in paragraph 287.133(1)(a), Florida Statutes means:

- a. A predecessor or successor of a person convicted of a public entity crime; or
- b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in the management of the affiliate. The ownership

by one person of shares constituting a controlling interest in another person, or pooling of equipment of income among persons when not for fair market value under an arm's length agreement, shall be 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.

6. 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 bids 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, directors, executives, partners, shareholders, employees, members and agents who are active in the management of an entity.

7. Based on information and belief, the statement that I have marked below is true in relation to the entity submitting this sworn statement. (Please indicate which statement below applies).

☒ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members and agents who are active in the management of the entity, or an affiliate of the entity have been charged with and convicted of a public entity crime after July 1, 1989.

☒ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members and 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 after July 1, 1989, AND (Indicate which additional statement below applies).

☒ There has been proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order).

☒ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order).

☒ The person or affiliate has not been placed on the convicted vendor list. (Please describe an action taken by or pending with the Department of General Services).



Thomas S. Brzezinski - 11/10/2021  
(Signature) and (Date)

THOMAS S BRZEZINSKI  
Printed Name

STATE OF FLORIDA

COUNTY OF Hillsborough

Sworn to (or affirmed) and subscribed before me by means of ☒ physical  
presence or ☐ online notarization, this 10th day of November, 2021,  
by Thomas S. Brzezinski.

[Notary Seal]

David E. Fetters  
Notary Public

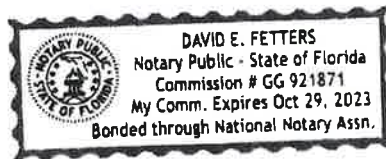
David E. Fetters

Name typed, printed or stamped

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_ Personally Known OR ☒ Produced Identification

Type of Identification Produced FLORIDA Drivers License



## Attachment B

### CONSULTANT AFFIDAVIT REGARDING SCRUTINIZED COMPANY LIST

Awarded CONSULTANT certifies that it and its SUBCONSULTANTS are not on the Scrutinized Companies that Boycott Israel List, pursuant to section 287.135, Florida Statutes. If the Contract is for more than \$1,000,000 the CONSULTANT further certifies that it and its SUBCONSULTANTS 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, Florida Statutes.

BEFORE ME, the undersigned authority, personally appeared THOMAS S. BRZEZINSKI, who, being first duly sworn, made the following statement:

1. This sworn statement is submitted by WADE TRIM,  
(Name of entity submitting sworn statement)  
whose business address is 201 N. FRANKLIN ST. SUITE 1350  
TAMPA, FL  
and (if applicable) its Federal Employer Identification Number is 59-2417170.
2. My relationship to WADE TRIM (name of  
CONSULTANT) is EXECUTIVE VICE PRESIDENT  
(relationship such as sole proprietor, partner, president, vice president).

3. I understand that "Boycott of Israel" has the same meaning as defined in section 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. WADE TRIM (name of CONSULTANT) 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. WADE TRIM (name of CONSULTANT) 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.

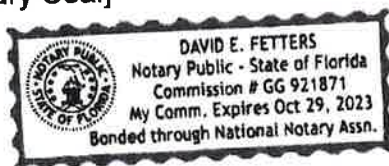
7. WADE TRIM (name of CONSULTANT) is not engaged in business operations in Cuba or Syria.

Thomas S. Brzezinski 11/10/2021  
Signature Date  
THOMAS S. BRZEZINSKI  
Printed Name

STATE OF FLORIDA  
COUNTY OF Hillsborough

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 10<sup>th</sup> day of November, 2021, by Thomas S. Brzezinski.

[Notary Seal]



David E. Feters  
Notary Public  
David E. Feters  
Name typed, printed or stamped

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_ Personally Known OR ☒ Produced Identification

Type of Identification Produced Florida License

**Attachment C**

**TRUTH-IN-NEGOTIATION CERTIFICATE AND AFFIDAVIT**

Before me, the undersigned authority, personally appeared Affiant, \_

THOMAS S. BRZEZINSKI who being first duly sworn, deposes and says:

1. That the undersigned firm is furnishing this Truth in Negotiation Certificate pursuant to Section 287.055(5)(a) of the Florida Statutes for the undersigned firm to receive a Contract for professional services with the Board of County Commissioners of Brevard County, Florida.
2. That the undersigned firm is a corporation which engages in furnishing professional engineering services and is entering into a Contract with the Board of County Commissioners of Brevard County, Florida to provide professional engineering services as a Continuing CONSULTANT.
3. That the undersigned firm has furnished the Board of County Commissioners of Brevard County, Florida a detailed analysis of the cost of the professional services.
4. That the wage rate information and other factual unit costs that the undersigned firm furnished were accurate, complete and current at the time the undersigned firm and the Board of County Commissions entered into the Contract for professional services.
5. That the Contract which the undersigned firm and Brevard County entered into contained a provision that the original Contract price and any additions thereto shall be adjusted to include any significant sums by which the Board of County Commissioners determines the Contract price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs and that all such Contract adjustments shall be made within one year following the end of the Contract.

FURTHER AFFIANT SAYETH NAUGHT.

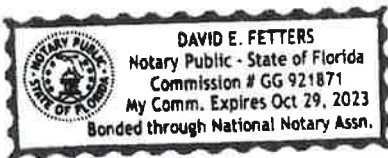
Thomas S. Brzezinski - 11/10/2021  
Signature Date  
THOMAS S. BRZEZINSKI  
Printed Name and Title EXECUTIVE VICE PRESIDENT

STATE OF FLORIDA

COUNTY OF Hillsborough

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 10th day of November, 2021, by Thomas S. Brzezinski.

[Notary Seal]



David E. Fetters  
Notary Public

David E. Fetters  
Name typed, printed or stamped

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_ Personally Known OR ☒ Produced Identification

Type of Identification Produced FLORIDA Drivers License

**Exhibit I**

**REQUEST FOR QUALIFICATIONS**



Brevard County Utility Services  
**REQUEST FOR QUALIFICATIONS**

**RFQ #7-21-09**

---

**Indian River Lagoon Restoration Program  
Septic-to-Sewer Conversion Projects**

Brevard County Purchasing Services  
2725 Judge Fran Jamieson Way, Bldg. C  
Viera, Florida 32940  
(321) 617-7390

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- I. INTRODUCTION**
- II. PURPOSE AND SCOPE OF SERVICES**
- III. RECORD INFORMATION AND SITE VIEWING**
- IV. SCRUTINIZED CONTRACTORS**
- V. REQUIRED USE OF E-VERIFY**
- VI. SPECIAL TERMS AND CONDITIONS OF THE SOLICITATION**
- VII. SUBMITTAL REQUIREMENTS**



# **REQUEST FOR QUALIFICATIONS (RFQ)**

**RFQ #7-21-09**

## **Indian River Lagoon Restoration Program Septic-to-Sewer Conversion Projects**

### **PART I: GENERAL INSTRUCTIONS**

#### **I. INTRODUCTION**

The Board of County Commissioners of Brevard County, Florida, (hereafter, County) announces that professional engineering services are required to perform project design, permitting, bidding assistance, and construction administration services for one or more of the following septic-to-sewer areas:

- |                                     |             |
|-------------------------------------|-------------|
| County Map of Septic to Sewer Areas | (Exhibit A) |
| 1. North Merritt Island             | (Exhibit B) |
| 2. South Merritt Island             | (Exhibit C) |
| 3. Central Brevard                  | (Exhibit D) |
| 4. Little Hollywood                 | (Exhibit E) |

See attached map for location and detail of the areas mentioned above.

#### **II. BACKGROUND, OVERVIEW, GOALS**

The Brevard County Natural Resources Management Office is administering the Indian River Lagoon Restoration Program. Part of that Program is elimination of certain septic tanks by extending wastewater collection to certain areas of Brevard County. Brevard County Utility Services is assisting the Program by contracting with consulting engineers through the Request for Qualifications process, to manage and supervise the design and construction of those wastewater collection extensions.

#### **III. PURPOSE AND SCOPE OF SERVICES**

The scope of the professional engineering services requested are to evaluate the gravity sewer versus vacuum sewer analysis, design the improvements, prepare bid documents, obtain required permits, provide bidding assistance, assist in construction contractor selection, provide construction management services, review shop drawings, answer contractor requests for information, authorize pay requests, prepare record drawings, provide operation and maintenance manuals, assist with start-up, and certify completion of construction.

The procurement of these services will be done by competitive selection and negotiation consistent with Chapter 287.055 of the Florida Statutes, "Consultants' Competitive Negotiation Act," and Brevard County Policy BCC-26, "Acquisition of Consultant Professional Services."

Qualified responses will be reviewed and ranked by the County's Selection Committee at a Public Meeting. At this meeting, the Selection Committee may make a final selection of the firm or firms; or the Selection Committee may choose to shortlist a minimum of the three (3) top-ranked firms. If shortlisting is done, the shortlisted firms will be requested to make a presentation to the Selection Committee followed by an interview by the Selection Committee.

At least five (5) days prior to the presentations/interviews the Selection Committee will provide those firms selected for a presentation/interview with a document that sets forth information regarding how the presentation and interview will be conducted, evaluated and ranked.

After the interviews, the Selection Committee will rank the finalists to determine the selected firm(s). The Negotiating Committee will then negotiate with the top-ranked firm(s). Selection will be made in accordance with the Florida "Consultants' Competitive Negotiations Act" (§ 287.055, F.S.) and Brevard County Policy BCC-26. Brevard County reserves the right to revise, delete portions, and/or limit the scope of professional services and to reject any and all Responses.

Responses to this RFQ for Indian River Lagoon Restoration Program Septic-to-Sewer Conversion Projects will be received until **March 11, 2021 @ 2:00pm.**

The deadline for questions will be March 2, 2021 @ 5:00pm.

Consultants shall promptly notify Purchasing Services, prior to their submission, of any ambiguity, inconsistency or error, which they may discover upon examination of the RFQ documents. No interpretation of the meaning of specifications or other documents will be made to any Consultant orally, nor may Consultant rely on any such pre-bid statements in completing the bid. Every request for such interpretation must be in writing addressed to Purchasing Services at 2725 Judge Fran Jamieson Way, Bldg. C, Suite 303, Viera, FL 32940, or emailed to the attention of Stephanie Reynolds at [stephanie.reynolds@brevardfl.gov](mailto:stephanie.reynolds@brevardfl.gov). To be given consideration, such requests must be received in writing no later than five days before the opening date.

Qualifications shall be submitted to the Brevard County Purchasing Services, Attn: Stephanie Reynolds, 2725 Judge Fran Jamieson Way, Building C-303, Viera, Florida 32940.

\*NOTE: Please ensure that if you use a third-party carrier (DHL Express, FedEx, UPS, USPS, etc.) that they are properly instructed to deliver your bid only to the Brevard County Purchasing Department at the address above. To be considered, an RFQ must be accepted in the Purchasing Services no later than the closing date and time.

All firms and their agents are hereby placed on notice that they are not to contact members of the Board of County Commissioners or staff regarding this RFQ, with the exception of the designated liaison. Public meetings of the Selection Committee are the only acceptable forum for the discussion of merits of products/services requested by this Request for Qualifications and written correspondence in regards to this Request for Qualifications is to be submitted to the designated liaison.

The staff member designated as the liaison for this Request for Qualifications is Stephanie Reynolds, Brevard County Purchasing Services, (321) 617-7390; e-mail [stephanie.reynolds@brevardfl.gov](mailto:stephanie.reynolds@brevardfl.gov).

#### IV. RECORD INFORMATION AND SITE VIEWING

Complete package is available on DemandStar® (<https://www.demandstar.com>) or on VendorLink ([www.myvendorlink.com](http://www.myvendorlink.com)) website.

You may also contact the Purchasing Services office at:

Brevard County Board of County Commissioners  
Purchasing Services  
Attn: Stephanie Reynolds  
2725 Judge Fran Jamieson Way, Building C, 3rd Floor

Viera, Florida 32940  
(321) 617-7390 / Email: [stephanie.reynolds@brevardfl.gov](mailto:stephanie.reynolds@brevardfl.gov)

The Utility Department will not provide access to these sites before the Consultants submittal of their qualifications. Consultants that make the shortlist will be allowed limited access to the sites prior to their presentations and interviews.

1. All responses shall become the property of the County. The details of the sealed response documents submitted by a respondent will remain exempt from public inspection consistent with Chapter 119.071 of the Florida Statutes, General Exemptions From Inspection or Copying of Public Records.
2. All Consultants must acknowledge and conform to the statement on Public Entity Crimes (Attachment "B") prior to entering into a Contract with the County.
3. If the County is unable to electronically verify the Consultant participates in the E-Verify Program, as required; the CONSULTANT SHALL be required to submit a copy of the fully executed E-Verify Memorandum of Understanding before the County will enter into contract or issue notice to proceed with Consultant.
4. The County will not reimburse a respondent for any costs associated with preparation and submittal of responses to this solicitation.
5. Consultants acknowledge that all information contained within their responses are ultimately public records to the extent required by the State of Florida Public Records Laws.
6. Awards made pursuant to this Request for Qualifications are subject to the provisions of Chapter 112, Part III, Florida Statutes, "Code of Ethics for Public Officers and Employees." All respondents must disclose in their responses the name of any officer, director, or agent who is also an employee of the County. Furthermore, all Consultants must disclose the name of any County employee who owns, directly or indirectly, any interest of five percent (5%) or more in the Consultant's firm or any of the respondent's branches or subsidiaries.
7. Consultants, their agents, and associates shall not contact any County official or member of the County staff regarding this Request for Qualifications during the selection process. Failure to comply with this provision will result in disqualification of the Consultant. Only the designated liaison identified in this response may be contacted.
8. Consultant shall not discriminate with respect to age, race, color, gender, religion, disability, or national origin in any manner with regard to this solicitation.
9. The responsibility for determining the extent of the professional engineering services required rests solely with the respondent. Neither the County nor its representatives shall be responsible for determining the final scope of services that may be required.
10. All timely responses will be considered. Consultants are requested to clearly indicate any deviations from the submittal requirements.
11. Each Consultant is responsible for full and complete compliance with all laws, rules and regulations including those of the Federal Government, State of Florida and applicable local ordinances. Failure or inability on the part of the respondent to have complete knowledge and intent to comply with such laws, rules and regulations shall not relieve any Consultant from its obligation to honor its response and to perform completely in accordance with its response.

12. The County, at its discretion, reserves the right to waive minor informalities or irregularities in any response, request clarification of information from Consultants, to reject any and all responses in whole or in part, with or without cause, and to accept any response, which, in the County's judgment, will be in the County's best interest.
13. Any interpretation, clarification, correction or change to the Request for Qualifications will be made by written addendum issued by Brevard County Purchasing Services. Any oral or other type of communication concerning the Request for Qualifications shall not be binding upon the County.
14. Responses must be signed by an individual of the Consultant's organization legally authorized to commit the Consultant's organization to the performance of the services contemplated by this Request for Qualifications.
15. Any Responses submitted before the deadline may be withdrawn by written request received by the County before the time fixed for receipt of Responses. Withdrawal of any Response will not prejudice the right of the respondent to submit a new or amended Response as long as Brevard County receives the Response by the deadline as provided herein.
16. For good and sufficient reason, up to forty-eight (48) hours before the advertised deadline, the County may extend the Response deadline. Notice will be provided by an addendum being published to VendorLink [www.myvendorlink.com](http://www.myvendorlink.com) and DemandStar [www.demandstar.com](http://www.demandstar.com).

#### V. SCRUTINIZED CONSULTANTS

Awarded Consultant shall certify that it and its subconsultants 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 Consultant further certifies that it and its subconsultants 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 Consultant submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Consultant 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 Consultant 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 Consultant submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Consultant 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 Consultant 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 Consultant 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.

#### VI. REQUIRED USE OF E-VERIFY

1. Brevard County will not accept bids from Consultants 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 Consultant's intentional employment of unauthorized aliens as grounds for immediate termination of any awarded proposal. The Consultant 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 Consultant during the term of the Contract and shall expressly require any subconsultants 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 subconsultant during the Contract term. **If the County is unable to electronically verify the lowest responsive responsible Consultant participates in the E-Verify Program; the lowest responsive responsible CONSULTANT SHALL be required to submit a copy of the fully executed E-Verify Memorandum of Understanding before the County will enter into contract or issue notice to proceed with Consultant.**

#### VII. SPECIAL TERMS AND CONDITIONS OF THE SOLICITATION

1. A Consultant with which the County successfully negotiates terms and conditions for the Work shall be required to enter into a contract with the County that incorporates the requirements of this Request for Qualifications and terms and conditions. If the parties cannot agree to the services and/or fees for the project, the County reserves the right to cease negotiations with the subject Consultant and initiate negotiations with the Second-ranked Consultant (and so on).
2. The successful Consultant shall hold harmless, indemnify and defend the County, its Commissioners, employees, representatives and agents against any claim, action, loss, damage, injury, liability, cost and/or expense arising out of or incidental to respondent's services under this Agreement. Consideration for this indemnification provision will be included in the Consultant's hourly rate.
3. **The successful Consultant shall not be allowed to substitute project team members named in this response during the course of the contract without prior written permission of the County. This requirement is not negotiable.**
4. The successful Consultant, prior to signing of the contract, and before starting work on any projects, shall be required to submit all certificates of insurance as follows:
  - a. Workers' Compensation - Workers Compensation insurance providing statutory benefits as required in the State of Florida. The Consultant shall require any subconsultant to provide evidence of this coverage. Additionally, if the contract requires working on or around a navigable waterway, the Consultant and all subconsultants shall provide evidence of United States Longshoremen's and Harbor Workers (USL&H) coverage and contingent coverage of Jones Act (Marine Employers Liability) in compliance with Federal statutes or proof of exemption. The Consultant shall be responsible for compliance with these requirements by each subconsultant, Consultant or supplier when applicable.
  - b. Comprehensive General Liability and Auto Liability - Including but not limited to bodily injury, property damage, and personal injury with limits of not less than **\$1,000,000**

combined single limit per occurrence including Contractual Liability incurred under this Contract.

- c. Professional Liability Insurance - For errors and omissions in the amounts of \$1,000,000 per claim.
5. Tie - Award of all tie rankings shall be made by the Purchasing Manager in accordance with State Statutes, which allows a respondent certified as a Drug-Free Workplace to have precedence. When evaluation of responses to solicitations results in the identical ranking with regards to the responses from two or more Consultants, the County shall determine the order of award using the following criteria in order of preference listed below (from highest priority to lowest priority):
- a. Priority shall be given to the respondent certifying that it is a Drug-Free Workplace as defined within §287.087, Florida Statutes;
  - b. Should a tie still exist, priority shall be given until the tie is broken, to the respondent with the highest total of raw scores for each evaluation criteria, progressing from the highest weighted criteria to the lowest rated criteria. If multiple evaluation criteria have identical weights, the combined total weights of the identically weighted criteria shall be used;
  - c. In the event that a tie still exists after progressing through a-b, 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 affected Consultants if they elect to be present.
6. Complaints and Disputes - 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:
- a. Posting of Award Notices
    - i. FORMAL SEALED BIDS/QUOTES: 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/quotes on VendorLink and DemandStar. The apparent low bid/quote will be the intended award recommendation. If after posting the tabulation, the apparent low bid/quote is found to be non-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.
    - ii. FORMAL SEALED PROPOSALS/RFQs: No later than three (3) business days after the selection committee recommendations are finalized the Purchasing Manager or his/her designee shall post the selection committee's rankings and recommended award for Proposals.
  - b. Proceedings
    - i. Any responding consultant—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.
    - ii. The formal written protest shall reference the bid/quote/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.
    - iii. 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 Proposal 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.

- iv. 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.

c. Stay of Procurement 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 Consultant and user agency will follow the guidelines set forth in AO-33, *Prompt Payment of Invoices*.

VIII. SUBMITTAL REQUIREMENTS

Responses will be evaluated based on the written document submitted as the response to this RFQ; therefore, the response must give a clear, concise, and complete statement of qualifications. For reasons of maintaining fairness and for ease of evaluation, responses to this Request for Qualifications must comply with the following directions and must be presented in this format and in this order:

SUBMITTAL FORMAT:

Submittals shall be printed on 8-1/2 × 11-inch paper, bound in booklet style, typed in Arial, Century, Courier, or Verdana typeface, in at least 12-point size. Both sides of the page may be printed. Number all pages. Covers, tables of contents, and divider tabs will not be counted in the section page limits. **Please submit three (3) fully executed signed copies and one (1) electronic copy on USB flash drive or CD/DVD.** The booklet shall be divided and organized with tabs as follows:

Tab 1: Introduction (maximum 4 pages)

- 1) Consultant's Basic Information – Consultant's name, mailing address, email address, and phone number(s).
- 2) Primary Contact Person – Name and contact information for the Consultant's primary contact person. This person will be the contact person for all matters related to the response to this RFQ, scheduling, negotiating, and contracting.
- 3) Consultant's Qualifications – Summary and highlights of the Consultant's qualifications and ability to provide the services identified in the purpose and scope paragraph of this RFQ (Section III). Detail the capacity & expertise of the staff within the firm and how it be utilized to complete the scope of work.
- 4) Additional Information – Additional information the Consultant believes relevant and important to his or her submittal not otherwise requested.

Tab 2: Organizational Profile and Subconsultants (maximum 6 pages)

- 1) Project Manager - Name, office location, background, education, and experience of the Consultant's project manager for all the services to be provided. This person will be the contact person for all technical services performed by the Consultant for Brevard County Utility Services.
- 2) Key Team Members - Name, office location, background, education, and experience of each key team member for the services to be provided.
- 3) Subconsultants - Identify services to be provided by subconsultants, and provide the name and contact information for each subconsultant's contact person,. Provide summaries of each subconsultant's experience relative to the portion of the services they intend to provide and working history of working with the prime consultant.
- 4) Organizational Chart - Graphical illustration of the service delivery structure.

Tab 3: Experience (maximum 8 pages)

- 1) Water & Wastewater Utility Experience - Describe the experience that the firm has had with Brevard County Utility Services or with any water & wastewater utility department throughout Florida.
- 2) Septic Conversion Experience - describe the experience that the firm has with septic conversion projects in Florida and detail what collection system approach was utilized (i.e. gravity sewer, vacuum sewer).

Project Summary - All projects mentioned under Tab 3 can be on-going or completed, within the last 10 years. Must have a minimum of 5 active continuing engineering service contracts with government/public entities within Florida. Must have a minimum of 6 septic-to sewer conversion projects. None of the projects can be predominately grinder pump system. For any project specific profile provided under Tab 3, each project profile should contain no less than the following:

- a. Name of the Project Manager
- b. Name of Key Staff Members
- c. Brief description of the project and its cost (i.e. engineering cost, awarded construction bid and construction change order).
- d. Scope of Consultant's involvement in the overall project
- e. Project References: Client, contact name, and phone number

Tab 4: Required Proposal Forms

- 1) GSA Standard Form 330 (Can be downloaded here - Form: SF330)
- 2) Signed Public Entity Crime Affidavit (Attachment A)
- 3) Signed Consultant Affidavit Regarding Scrutinized Company List (Attachment B)
- 4) Drug Free Workplace Form (Attachment C)
- 5) Reference Form (Attachment D)
- 6) Location Checklist (Attachment E)

IX. EVALUATION CRITERIA

In accordance with Section 287.055, Florida Statutes or most recent supplement, final rankings of the firm will be presented to the Brevard County Board of County Commissioners for approval and authorization to negotiate with top-ranked firms. Each response will be evaluated by the Selection Committee members and subjectively scored on Compliance with Instructions, Introduction, Organizational Profile and Subconsultants, Experience, and Design Approach for a maximum of 100 points as outlined below. The format of the submittal constitutes part of the RFQ response.



<u>Criteria</u>	<u>Weighted Score</u>
<b><u>Tab 1: Introduction</u></b>	<b><u>20</u></b>
1. General summary of qualifications	10
2. Staffing Capacity	5
3. Additional information	5
<b><u>Tab 2: Organizational Profile and Subconsultants</u></b>	<b><u>30</u></b>
1. Project manager qualifications	10
2. Key team members	10
3. Subconsultants qualifications	5
4. Organizational structure	5
<b><u>Tab 3: Experience</u></b>	<b><u>50</u></b>
1. Brevard County Experience (or other utility department experience)	20
2. Septic Conversion Experience	30
<b>Total ► <u>100</u></b>	

X. SELECTION COMMITTEE

The Selection Committee appointed by the County Manager to review and evaluate the statement of qualification and performance data includes the following:

Matt Prendergast, Utility Services Assistant Director  
Don Kean, Utility Services Engineering Manager  
Lucas Siegfried, Utility Services Engineer III  
Virginia Barker, Natural Resources Director  
John Denninghoff, Assistant County Manager

ATTACHMENT A

**PUBLIC ENTITY CRIME FORM**

**Section 287.133(3)(a), Florida Statutes, on Public Entity Crimes:**

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/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a consultant, supplier, subconsultant, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

Acknowledged: \_\_\_\_\_

Date: \_\_\_\_\_

ATTACHMENT B

**CONTRACTOR 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\_\_\_\_.

(AFFIX SEAL or STAMP)

\_\_\_\_\_  
Notary Public

My commission expires:

## ATTACHMENT C

### CONFIRMATION OF DRUG-FREE WORKPLACE FORM

In accordance with Section 287.087, Florida Statutes, "whenever two or more bids are equal with respect to price, quality, and service which are received by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

- (1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- (2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- (3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- (4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than 5 days after such conviction.
- (5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted.
- (6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section."

*As the person authorized to sign the statement, I certify that this firm complies with the above requirements and the Florida Statutes Section 287.087. This form is in conjunction with Brevard County's General Conditions, Item 27, Drug-Free Workplace.*

\_\_\_\_\_  
Business Name

\_\_\_\_\_  
Bid Number and Name

\_\_\_\_\_  
Authorized Representative's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position



BOARD OF COUNTY COMMISSIONERS

12/21/2021  
Utility Services Department

2725 Judge Fran Jamieson Way  
Building A, Room 213  
Viera, Florida 32940

## Inter-Office Memo

TO: Commissioner Kristine Zonka, Chair

THROUGH: Frank Abbate, County Manager *FA*

THROUGH: John Denninghoff, Assistant County Manager *JD*

FROM: Edward Fontanin P.E., Utility Services Director *EF*

DATE: December 9, 2021

SUBJ: Execution of Utility Services CIP Construction Contract:  
South Beaches Wastewater Treatment Facility Injection Well Rerating and MW-3  
Repair  
RFP No. P-7-21-25

On September 21, 2021, the Brevard County Board of County Commissioners voted to approve the Capital Improvement Projects (CIP) plan as identified by Utility Services for Fiscal Year (FY) 2022. After proposals were opened for the project referenced above, All Webb's Enterprises Inc. was confirmed to be the lowest responsive and responsible, pre-qualified bidder, with an accepted total Contract Price of Seven Hundred Twenty Thousand Dollars, (\$720,000.00).

Accordingly, the contractor executed the original contract documents, provided the required performance and payment bonds, and provided insurance certificates fulfilling the contract requirements.

Attached, please find two (2) original copies of the contract for the project. Prior to contract execution, this contract was approved by the County Attorney. Please execute each original where indicated. In addition, the Initial Contract and Approval Form have been included in this package for your review. Upon completion, please return all of the originals to this Department and we will forward them to the Clerk for attestation.

If you have any questions, please notify me at 633-2091. Thank you for your assistance.

Attachments:

(2) Original Contracts

Copy of Initial Contract Review and Approval Form

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

## **CONTRACT REVIEW AND APPROVAL FORM**

### **SECTION I - GENERAL INFORMATION**

<b>1. Contractor:</b> All Webb's		<b>2. Amount:</b> 720,000.00
<b>3. Fund/Account #:</b> 4150/365140	<b>4. Department Name:</b> Utility Services	
<b>5. Contract Description:</b> South Beaches WWTF Injection Well Rerating and MW-3 Repair		
<b>6. Contract Monitor:</b> Jennifer Thomas	<b>8. Contract Type:</b>  CONSTRUCTION	
<b>7. Dept/Office Director:</b> Edward Fontanin, P.E.		
<b>9. Type of Procurement:</b> Request for Proposal (RFP)		

### **SECTION II - REVIEW AND APPROVAL TO ADVERTISE**

#### **APPROVAL**

<u><b>COUNTY OFFICE</b></u>	<u><b>YES</b></u>	<u><b>NO</b></u>	<u><b>SIGNATURE</b></u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Fontanin, Edward <small>Digitally signed by Fontanin, Edward Date: 2021.07.08 13:02:19 -04'00'</small>
Purchasing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Reynolds, Stephanie <small>Digitally signed by Reynolds, Stephanie Date: 2021.08.04 09:39:20 -04'00'</small>
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lairsey, Matt <small>Digitally signed by Lairsey, Matt Date: 2021.07.09 14:58:48 -04'00'</small>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jorandby, Abigail F. <small>Digitally signed by Jorandby, Abigail F. Date: 2021.07.12 10:36:22 -04'00'</small>

### **SECTION III - REVIEW AND APPROVAL TO EXECUTE**

#### **APPROVAL**

<u><b>COUNTY OFFICE</b></u>	<u><b>YES</b></u>	<u><b>NO</b></u>	<u><b>SIGNATURE</b></u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Fontanin, Edward <small>Digitally signed by Fontanin, Edward Date: 2021.11.22 16:41:24 -05'00'</small>
Purchasing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Darling, Steven <small>Digitally signed by Darling, Steven Date: 2021.11.23 13:06:37 -05'00'</small>
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lairsey, Matt <small>Digitally signed by Lairsey, Matt Date: 2021.12.01 11:41:20 -05'00'</small>
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	Balser, Heather <small>Digitally signed by Balser, Heather Date: 2021.12.07 14:38:21 -05'00'</small>

### **SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST**

<b>CM DATABASE REQUIRED FIELDS</b>	<b>Complete ✓</b>
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

12/21/2024

SECTION 00500

CONTRACT

THIS CONTRACT, made and entered into this 14<sup>th</sup> day of October 2021 by and between the Brevard County, Florida Board of County Commissioners, a political subdivision of the State of Florida (hereinafter called the Owner), and All Webb's Enterprises, Inc., a Florida corporation, doing business at 309 Commerce Way Jupiter, Florida 33458 (hereinafter called the "Contractor").

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

1.01 SCOPE OF THE WORK

The Contractor shall furnish all labor, materials, equipment, machinery, tools, apparatus, and transportation to perform all of the work shown on the Drawings, Plans, and Specifications prepared by the Engineer, CD Smith, Inc, entitled as follows:

**South Beaches WWTF Injection Well Rerating and MW-3 Repair**

as prepared by CDM Smith Inc., acting as, and in the Contract Documents entitled, the Engineer, and shall do everything required by this Contract and the other Contract Documents.

1.02 THE CONTRACT SUM

Based upon the price shown in the Contractor's Bid heretofore submitted to the Owner, which Bid is part of these Contract Documents, the aggregate amount of this Contract is the sum of Seven Hundred Twenty Thousand and No Hundredths Dollars (\$720,000.00), which is to be paid to Contractor subject to additions and deletions as provided in the Contract Documents.

1.03 COMMENCEMENT AND COMPLETION OF WORK

- A. The Contractor shall commence work within ten (10) calendar days after issuance of the Notice to Proceed by the Owner.
- B. The Work, or portions thereof, shall be completed within the time set forth below. Liquidated Damages shall be imposed in the amount as set forth below for the following events:



Article	Description	Unit
Definitions	Substantial Completion	60 calendar days from NTP
Definitions	Final Completion	30 calendar days from Substantial Completion
	Liquidated Damages for each calendar day after time specified for Substantial Completion	<u>\$1,665.00</u> per calendar day

#### 1.04 CONTRACTOR'S ACCEPTANCE OF CONDITIONS

- A. The Contractor hereby agrees that the surface and subsurface of the site has been carefully examined. The Contractor acknowledges that sufficient test holes have been made, or other subsurface investigations made and is satisfied that the Project site is correct and suitable for this work, including all utility areas, and assumes full responsibility, therefore.

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.

- B. Any ambiguity, inconsistency, or uncertainty in the Drawings, Plans, Specifications, or any Contract Document shall be reported in writing by the Contractor to the Owner and Engineer of Record. Such ambiguity or uncertainty shall then be interpreted and construed by the Engineer of Record in writing, and such final determination shall be final and binding upon all parties.
- C. It is distinctly understood and agreed that the passing, approval and acceptance of any part of the work or materials by the Owner, the Engineer of Record, or by their agents or representatives for compliance with the terms of the Contract Documents 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.

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 Plans, 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. 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 defective materials and workmanship shall entitle the Owner, in the Owner's sole discretion, to replace or repair the same and, after written 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.

- D. The Contractor hereby agrees that normal local weather conditions have been considered in the establishment of the contract time. The Contractor expressly acknowledges that unfavorable working conditions will exist at the work site as a result of normal local weather.

The Contractor shall take into consideration local weather conditions in planning and scheduling of the work to ensure the completion of the work within the contract time provided. No time extensions will be granted for the Contractor's failure to take into account such weather conditions for the location of the work and for the period of time in which the work is to be accomplished.

#### 1.05 LIQUIDATED DAMAGES

- A. Both parties recognize that precise actual damages for delay are impossible to determine due to the impossibility of precisely ascertaining the amount of damages that will be sustained by the Owner as a consequence of such delay. Both parties desire to obviate any question of dispute concerning the amount of said damages for delay and the cost and impact of the failure of the Contractor to complete the Contract on time. The parties therefore agree to fix liquidated damages for delay in the Substantial Completion of the Project. The term Substantial Completion is more fully defined in Section 00700 of this Contract. As a condition precedent to the issuance of the Notice to Proceed by the Owner, a written addendum setting forth a reasonable date by which the Contractor must achieve Substantial Completion shall be executed by the Contractor, Owner, and the Owner's Engineer. The reasonable Substantial Completion date set forth in the addendum shall be determined by the Owner's Engineer after consultation with the Contractor.

On the Substantial Completion date, or such revised Substantial Completion date of the Project as may occur because of an authorized written Change Order of contract time for Substantial Completion, all essential elements of the Project must be ready for their intended use. Upon failure of the Contractor to attain Substantial Completion as agreed to by the parties (plus approved extensions, if any), the Contractor shall pay \$1,665.00 for each calendar day of delay after the date specified for Substantial Completion up to but not including the date the Project is deemed substantially complete by the Owner's Engineer.

The parties stipulate this amount is not a penalty, but liquidated damages to the Owner based on a reasonable measure of damages from the parties' experience in the utility wastewater construction industry and given the nature of losses that result from delays. Additionally, it is agreed and stipulated that liquidated damages to the Contractor will be acknowledged due to delays caused by the Owner and said liquidated damages to the Contractor shall be limited to the extension provision of contract time.

- B. This liquidated damages clause applies only to delay claims arising out of the Contractor's failure to timely perform the work required under the Contract. Nothing in this liquidated damages provision shall be deemed to preclude the prosecution of a claim by the County for actual damages involving any defects in the work, breach of contract of any kind, negligence, or any other claim for damages not involving a claim based solely on delay caused by the Contractor's untimely performance of the work.

- C. For each day that any part of the work remains uncompleted after the expiration of the time allowed for completion of the work stipulated in the Contract or as increased by an authorized written Change Order, the sum per day set forth in the applicable subparagraph A, B or C above, shall be deducted from any moneys due the Contractor for final payment. If no money is due the Contractor, the Owner shall have the right to recover the liquidated damages sum from the Contractor. The amount of these deductions are to cover liquidated damages to the Owner incurred by additional and other expenses due to the failure of the Contractor to complete the work or any part of the work within the completion time specified in subparagraph A, whichever is applicable, and such deductions are not to be considered as penalties.

#### 1.06 PARTIAL AND FINAL PAYMENTS

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

- A. The Owner shall make partial payments to the Contractor, on the basis of the estimate of work as approved by the Owner's Engineer, pursuant to provisions of Chapter 218, Florida Statutes, Florida Prompt Payment Act and Fla. Stat. Sect. 255.078, less five percent (5%) of the amount of such estimate which is to be retained by the Owner until all work has been performed strictly in accordance with this Contract and until such work has been accepted by the Owner. The Owner shall not be responsible for payment to the Contractor for delays.
- B. Upon receipt of the payment bond Surety's written consent to the release of final payment to the Contractor who has furnished and recorded a payment bond and after all guarantees that may be required in the specifications have been furnished and are found acceptable by the Owner, final payment on account of this Contract shall be made within twenty (20) days after completion by the Contractor of all work covered by this Contract and acceptance of such work by the Owner. If the payment bond surety serves a written revocation of consent to payment or a written direction that the COUNTY withhold a specified amount from a payment, the COUNTY shall withhold from the final payment the amount specified by the payment bond Surety.

#### 1.07 ADDITIONAL BOND

- A. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Contract and the Performance and Payment Bonds 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 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 Contract until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.

#### 1.08 CONTRACT DOCUMENTS

- A. The Contract Documents are those referenced in Section 00100 of the Contract in Article 1

entitled "Definitions", as set forth in the Instructions to Bidders, which are attached hereto, and such contract documents also include any approved and fully executed change or task orders. All of the above-described contract documents are incorporated as a part of this Contract as if set forth in full herein.

1.09 E-VERIFICATION

- A. In accordance with Chapter 448.095, Florida Statutes, a public employer, contractor, or a subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify System.
- B. The County shall not enter into, or renew, a contract with a vendor/ contractor that is not enrolled in E-Verify. Any vendor/contractor that has a contract with the County shall be contractually required to utilize E-Verify to confirm the employment eligibility of any employee hired during the contract term.
- C. The County shall verify the Vendor's/Contractor's participation in E-Verify Program by confirming their enrollment on the Department of Homeland Security E-Verify Website. Vendor's/Contractor's whose participation cannot be verified on the Department of Homeland Security's E-Verify Website, shall provide acceptable evidence of their enrollment prior to award and the execution of a contract. Acceptable evidence shall include, but not be limited to, a copy of the fully executed E-Verify Memorandum of Understanding for the business.
- D. A contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section 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.
  - i. Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

#### 1.10 PUBLIC RECORDS.

In the performance of this Contract, the Contractor shall keep books, records and accounts of all activities related to the Contract in compliance with generally accepted accounting procedures and in compliance with the Public Records Laws of the State of Florida (Including, but not limited to Chapter 119, Florida Statutes).

All records or documents created by Contractor or provided to Contractor by the County in connection with the activities or services provided by Contractor under the terms of this Contract, are public records and Contractor agrees to comply with any request for such public records or documents made in accordance with Chapter 119, Florida Statutes. Records, documents, books and accounts ordinarily and necessarily required for the performance of this Contract shall be kept, maintained and open for inspection by the County, County's representative, and members of the public during regular business hours. The Contractor shall provide the public with access to public records on the same terms and conditions that the public agency provides the records and at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, or as otherwise provided by law (see also County Administrative Order, AO-47).

The Contractor shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Contract shall be subject to copyright by Contractor in the United States or any other country.

Should the County face any 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, the Contractor agrees to indemnify the County for all damages and expenses, including attorney's fees and costs. The Contractor shall hire and compensate attorney(s) to represent the Contractor and the County in defending such action. The Contractor shall pay all costs to defend such action and any costs and attorneys fees awarded pursuant to Section 119.12, Florida Statutes.

The Contractor shall meet all requirements for retaining public records and shall transfer, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to comply with the provisions of this Section, shall result in the County taking enforcement action against the Contractor including the cost to the County for gaining the Contractor's compliance which will include, but are not limited to, the gross hourly rate of the County's employee(s) contacts to the Contractor to obtain compliance with this Section, litigation filing fees and attorney's fees.


**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT Katie Ballagh, THE CUSTODIAN OF PUBLIC RECORDS AT (321) 633-2046, [Katie.Ballagh@brevardfl.gov](mailto:Katie.Ballagh@brevardfl.gov) OR 2725 JUDGE FRAN JAMIESON**

WAY, BUILDING A, SUITE 213, VIERA, FLORIDA 32940.

IN WITNESS WHEREOF the parties hereto have executed this Contract on the dates indicated below:\*

Attest:

Board of County Commissioners of  
Brevard County, Florida (Owner)

  
Rachel Sadoff, Clerk

By: 

Kristine Zonka, Chair

Date: 12/21/2021


As approved by the Board on:  
December 21, 2021

  
ALL WEBBS ENTERPRISES INC.  
Contractor

Date: 11/22/2021

Reviewed for legal form and content:

By: DAVID WEBB JR  
(Printed Name)

  
(Assistant) County Attorney

Signature: 

Title: VICE PRESIDENT

\_\_\_\_\_  
(Seal)

(\*) In the event that the Contractor is a Corporation, there shall be attached to the Contract 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.

CERTIFICATE

STATE OF FLORIDA

COUNTY OF PALM BEACH

I HEREBY CERTIFY that a meeting of the Board of Directors of ALL WEBBS ENTERPRISES, INC.<sup>a</sup> Corporation under the laws of the State of FLORIDA, held on NOVEMBER 22, 2021, the following resolution was duly passed and adopted:

“RESOLVED, that DAVID WEBB JR., as VICE President of the Corporation, be and he is hereby authorized to execute the Contract dated October 14<sup>th</sup>, 2021, also known as “South Beaches WWTF Injection Well Rerating and MW-3 Repair”, between BREVARD COUNTY, FLORIDA, and this Corporation, and that his 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 this 22 day of NOVEMBER, 20 21.

Deborah Webb  
Secretary

END OF SECTION

## FIRST ADDENDUM TO CONTRACT

**THIS FIRST ADDENDUM TO CONTRACT** ("Addendum") is made and entered into this 14th day of October, 2021, by and between **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, hereinafter "Owner" or "County", and **All Webb's Enterprises, Inc.**, hereinafter "Contractor. Owner and Contractor, together, may be hereinafter designated as the "Parties."

**WHEREAS**, the Parties desire to agree to additional terms and conditions and thereby amend that certain Contract entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between the Parties in that Contract.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties do agree to amend the Contract to include the following:

**1. CONTRACTOR AFFIDAVIT REGARDING SCRUTINIZED COMPANY LIST:**

**1.1** 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 Contract 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.

**1.2** 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.



**2. RIGHT TO AUDIT RECORDS:**

**2.1** In the performance of the Contract, the vendor shall keep books, records, and accounts of all activities, related to the Contract, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of Brevard County and shall be retained by the vendor for a period of three years after termination of this Contract. All records, books and accounts related to the performance of this Contract shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.

**2.2** No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Contract shall be subject to copyright the vendor in the United States or any other country.

**3. SUSPENSION OF WORK AND TERMINATION; CHANGE OF CONTRACT TIME: NO DAMAGES FOR DELAY; GUARANTY: TESTS AND INSPECTIONS:**

**3.1** The Director of the Brevard County Utility Services Department may, at any time and without cause, suspend the WORK or any portion thereof for a period of not more than ninety days by notice in writing to the CONTRACTOR and the Owner's ENGINEER which shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume the WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes a claim therefor.

**3.2** The Contractor shall not be entitled to an increase in the Contract Sum or payment or compensation of any kind from the Owner for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration, or inefficiency, arising because of delay, disruption, interference or hinderance from any cause whatsoever, including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, acts or neglect by utility owners or other contractors performing other work; however, this this provision shall not preclude recovery or damages by the Contractor for hinderances or delays due solely to fraud, bad faith, or active interference on the party of the County or its agents. Otherwise, the Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

**3.3** Contract time shall not be extended for rain delays. The Owner may consider granting time extensions as stipulated in Section 8-6.1.1 of FDOT Specifications for temporary suspension of work due to adverse weather conditions due to catastrophic occurrences.

3.4 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of two (2) years from the date when final payment becomes due. The CONTRACTOR warrants and guarantees for a period of two (2) years from the date when final payment becomes due that the completed system is free from all defects due to faulty material or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or the WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Maintenance Bond shall remain in full force and effect through the guarantee period. Express warranties are set forth in the Supplementary Conditions or in the Technical Specifications.

3.5 OWNER'S ENGINEER and ENGINEER'S representatives, other representatives of OWNER, testing agencies and governmental agencies with jurisdictional interests will have access to the WORK at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide proper and safe conditions for such access.

3.6 CONTRACTOR shall give OWNER'S ENGINEER and the OWNER timely notice of readiness of the WORK for all required inspections, tests or approvals.

3.7 If Laws or Regulations of any public body having jurisdiction require any WORK (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish OWNER'S ENGINEER and the OWNER the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the OWNER'S or OWNER'S ENGINEER'S acceptance of a Supplier or materials or equipment proposed to be incorporated in the WORK, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof, for incorporation in the WORK.

3.8 All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by OWNER'S ENGINEER, if so specified).

3.9 If any WORK (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of the OWNER, it must, if requested by the OWNER, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense.

3.10 Neither observations by OWNER'S ENGINEER nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR'S obligations to perform the WORK in accordance with the Contract Documents.

**4. COVENANTS AGAINST ASSIGNMENT:**

The Contractor, its successors or assigns, shall not assign any rights under this Contract nor allow same to be assigned by operation of law without express written approval of the County. The Contractor may not assign any right under this Contract, any part thereof, or any right or privilege connected therewith, or to allow any other individual, group, or Contractor.

**5. CHANGE ORDERS.**

**5.1 DEFINITIONS.**

**Change Order:** A written change to the Contract Documents approved by the OWNER added to or deleted from the Contract value or scope of work for the project. A Change Order is a signed amendment to the Contract Documents for any of the following:

- A. A change in the Scope of Work;
- B. The adjustment in the amount of the contract sum, if any; and
- C. The extension or the adjustment in the contract time, if any.

**Contract Documents:** The "Contract Documents," sometimes referred to as the "Drawings and Specifications" and/or "Contract", shall mean and include by incorporation by reference all of the following:

- a. Advertisement for Bids;
- b. Instructions to Bidders;
- c. Bid;
- d. Bid Bond;
- e. Contract;
- f. Public Construction Payment Bond & Public Construction Performance Bond;
- g. General Conditions;
- h. Special Conditions;
- i. Supplemental Specifications;
- j. Technical Conditions
- k. Technical Specifications
- l. Addenda;
- m. Drawings;
- n. Certificate of Work; and
- o. Signed Change Orders
- p. Schedule of Work
- q. Signed written task orders
- r. Notice of Award
- s. Notice to Proceed

**Contract Time:** The time period in calendar days between the Project Initiation

Date(s) specified in a Notice(s) to Proceed and Final Completion of the Work, including any Milestone dates, established in this Contract, which may be amended by a Change Order.

**Force Account Work:** Work performed pursuant to a work order from the Owner in addition to that set forth in the original contract or in supplemental agreements or change orders, and which is paid for on the basis of actual cost of materials and labor, plus a fixed percentage of such costs.

**The Owner's Representative:** Any instructions, advice, or recommendations Owner's Engineer may give the Contractor are given in the name of the Owner and by Owner's authority and consent. The Owner's Engineer shall not supplant the Contractor in 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 orders and instructions of the Owner to the Contractor shall be given through the Owner's Engineer. It is recognized that the Contractor is wholly and solely responsible for delivery to the Owner of the completed work in compliance with all Contract Documents and in good workmanship. If directions given by Owner's Engineer will result in change in contract price or time, Contractor must notify Owner's Engineer, and receive an approved Change Order, before beginning the work.

## **6. PERFORMANCE, PAYMENT, AND MAINTENANCE BONDS:**

**6.1** Simultaneously with Bidder's delivery of the executed Contract to the Owner, a Bidder to whom a Contract has been awarded must deliver to the Owner executed Performance and Payment Bonds on the prescribed forms, each in an amount of one-hundred percent (100%) of the total amount of the accepted Bid, as security for the faithful performance of the Contract and for the payment of all persons performing labor or furnishing materials in connection therewith. A Maintenance Bond in the amount of 25% of the total amount of the Contract, including change orders shall be submitted at contract closeout with the request for final payment. The Performance, Payment, and Maintenance Bonds 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 and with a resident agent in the State of Florida. The Attorney-In-Fact, or other officer who signs the Performance, Payment, and Maintenance Bonds for a surety company, must file with such bonds a certified copy of his Power-Of-Attorney authorizing him to do so.

**6.2** The Payment Bond shall remain in force for one (1) year and the Maintenance Bond for two (2) years from the date of final acceptance of the Work as a protection 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 during that period. The Performance Bond shall remain in force pursuant to Fla. Stat. Sect. 95.11(2)(6).

**7. BONDS AND INSURANCE:**

**7.1** The CONTRACTOR shall provide the OWNER with insurance certificates, with coverage as specified in these Contract Documents, certifying that all required insurance is in force. Such insurance certificates shall include a provision which states that the OWNER shall be notified in writing, by certified mail, of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. Insurers must be licensed to conduct business in the State of Florida and have an A.M. Best's rating as well as a financial class that complies with the minimums. As the companies being rated acceptable: The surety company shall meet all requirements of Florida Statute 287.0935. In cases where the amount of the bond exceeds \$500,000, the surety company shall have an A.M. Best's rating of no less than A- and, in cases where the amount of the bond is \$500,000 or less, the surety company shall have an A.M. Best's rating of no less than B+. Depending on the amount of the bond, the surety company shall have a minimum A.M. Best's financial size category ranking as follows: The agent countersigning the bond shall be resident in the State of Florida.

**7.2** The CONTRACTOR shall maintain during the life of this Contract, full and complete Worker's Compensation coverage, for all employees who will be engaged in WORK on the project under this Contract, as required by the State of Florida law. In case any such WORK is sublet, the CONTRACTOR shall require the Subcontractor similarly to provide Workers' Compensation and Employers' Liability Insurance for all of the latter's employees to be engaged in such WORK. Where WORK under this contract includes any water or navigational exposure, coverage shall be included to cover the Federal Longshoremen's and Harborworker's Act and the Federal Jones Act.

**7.3** The CONTRACTOR, at its own expense, shall keep in force and at all times maintain proper insurance during the term of this Contract:

General Liability Insurance: to include completed operations, products liability, and contractual liability coverages with combined single limits to cover damages for personal injury, accidental death as well as for property damage which may arise directly or indirectly from the performance of the WORK to be completed under this Contract. Coverage for property damage shall be on a "broad form" basis with no exclusions for "X", "C" and "U". Certificate of Insurance must explicitly state that "X", "C", and "U" are included in this coverage. Minimum limits of insurance to be provided shall be \$5,000,000, per occurrence. Where applicable, the CONTRACTOR shall purchase and maintain adequate flood insurance coverage for WORK within designated flood hazard areas as defined by Public Law 93-234 (Flood Disaster Protection Act).

**7.4** Automobile Liability Insurance: Automobile Liability coverage shall be in the minimum amount of \$1,000,000, combined single limits for Bodily Injury and Property Damage per accident.

**7.5 Workers' Compensation and Employers Liability Insurance:** Workers Compensation insurance providing statutory benefits as required in the State of Florida. The Contractor shall require any subcontractor to provide evidence of this coverage. Additionally, if the contract requires working on or around a navigable waterway, the Contractor and all subcontractors shall provide evidence of United States Longshoremen's and Harbor Workers (USL&H) coverage and contingent coverage of Jones Act (Marine Employers Liability) in compliance with Federal statutes or proof of exemption. The Contractor shall be responsible for compliance with these requirements by each subcontractor, vendor or supplier.

**7.6 Insurance Certificates:** The CONTRACTOR shall provide the OWNER with Certificate(s) of Insurance on all the policies of insurance and renewals thereof in a form acceptable to the OWNER. The OWNER shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the OWNER and licensed and authorized under the laws of the State of Florida. In addition, each Certificate of Insurance must:

**7.6.1.** Clearly state and name the OWNER, as Certificate Holder, as an additional insured for all Liability coverage with no exceptions or exclusions of any kind;

**7.6.2.** Include "Brevard County Board of County Commissioners" as the first line on the form which identifies the Certificate Holder;

**7.6.3.** Specifically indicate on the Certificate that "X", "C", and "U" coverage is included under General Liability;

**7.6.4.** Identify the specific coverage provided for Builder's Risk Insurance. Fire and Extended Coverage Insurance (Builder's Risk).

**7.7** The CONTRACTOR shall maintain, as applicable, in an Insurance Company or Insurance Companies acceptable to the OWNER, Fire, Extended Coverage and Vandalism & Malicious Mischief Insurance on buildings and structures, while in the course of construction, including foundations, additions, attachments and all permanent fixtures belonging to and constituting a part of said buildings or structures. The policy or policies shall also cover machinery, if the cost of machinery is included in the Contract. The amount of insurance must at all times be at least equal to the actual cash value of the insured property. The policy shall be in the name of the OWNER and the CONTRACTOR, as their interest may appear, and shall also cover the interests of all Subcontractors performing WORK.

**7.8** If any insurance should be canceled or changed by the insurance company or should any insurance expire during the period of this Contract, the CONTRACTOR shall be responsible for securing other acceptable insurance to provide the coverage specified in this section to maintain continuous coverage during the life of this Contract.

**8. CONCERNING SUBCONTRACTORS:**

The CONTRACTOR will not employ any Subcontractor, other person or organization

against whom the OWNER may have reasonable objection, nor will the CONTRACTOR be required to employ any Subcontractor against whom CONTRACTOR has reasonable objection. The CONTRACTOR will not make any substitution for any Subcontractor who has been accepted by the OWNER unless the OWNER determines that there is good cause for doing so.

**9. INDEPENDENT CONTRACTOR:**

The Contractor shall perform the terms and conditions of this Contract as an independent contractor, and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Contract shall, in any way, be construed to constitute the Contractor or any of its agents or employees as the representative agents or employees of the County.

**10. PUBLIC ENTITY CRIMES:**

**10.1** 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 or 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 any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**10.2** Therefore, prior to entering into a contract (formal contract or purchase order) in excess of the threshold amount established by law to provide goods or services to Brevard County, a person shall file a sworn statement with the contracting officer or Purchasing Director, as applicable. The attached statement or affidavit will be the form to be utilized and must be properly signed in the presence of a notary public or other officer authorized to administer oaths and properly executed.

**10.3** The inclusion of the sworn statement or affidavit shall be submitted concurrently with your quote or bid documents. Non-inclusion of this document may necessitate rejection of your quote or bid.

**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 and any trial shall be non-jury, provided however, that any Surety incorporating all or a part of the Contract Documents into a performance, maintenance or bid bond shall be liable for the County's attorney's fees where authorized by Florida statutory law, as interpreted by case law, making a surety or insurance company liable for payment of the County's attorney's fees as a result of litigation or a dispute arising out of either a performance bond or a contract incorporated into a performance bond.

**12. NON-EXCLUSIVE CONTRACT:** Contractor acknowledges that County may enter into

agreements with other contractors for services similar to the services that are subject to this Contract or may have its own employees perform services similar to those services contemplated by this Contract.

13. **CONFLICT OF INTEREST:** In order for the County to comply with section 286.101, Florida Statutes, all prospective contractors and grant recipients seeking to contract with the County, or receive a grant from the County, where said contract or grant has a value of \$100,000 or more must disclose to the County (1) any current or prior interest of, (2) any contract with, or (3) any grant or gift received from a foreign country of concern (defined as the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, and the Syrian Arab Republic, or an agency or other entity under the significant control of such foreign country of concern) if such interest, contract, or grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous five years. Contractor shall execute all documentation required by the County. Within one year before applying for any grant or proposing any Contract, such entity must provide a copy of such disclosure to the Department of Financial Services. A Contract is any agreement for the direct benefit or use of any party to such agreement, including an agreement for the sale of commodities or services. A Gift is any transfer of money or property from one entity to another without compensation. A Grant is a transfer of money for a specified purpose, including a conditional gift. An interest in an entity means any direct or indirect investment in or loan to the entity valued at 5 percent or more of the entity's net worth or any form of direct or indirect control exerting similar or greater influence on the governance of the entity.
14. All other terms and conditions of the Contract shall remain the same and in full force and effect.

[The Remainder of This Page Left Intentionally Blank]



IN WITNESS WHEREOF, the Owner and Contractor have respectively signed and sealed this Contract as of the day and year first above written.

WITNESSES

As to Contractor:



CONTRACTOR:

By:

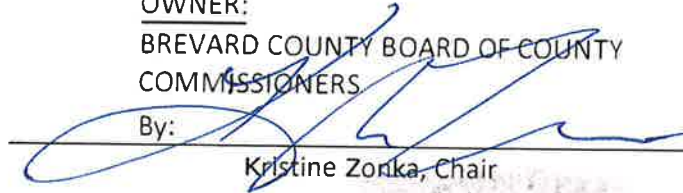


Manager

OWNER:

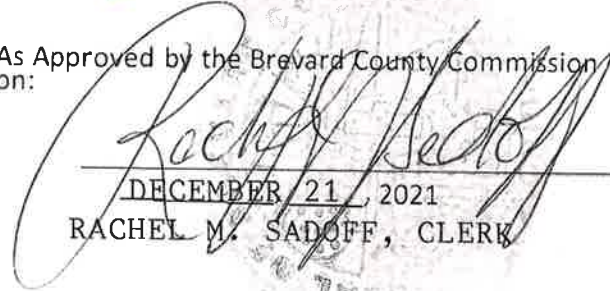
BREVARD COUNTY BOARD OF COUNTY  
COMMISSIONERS

By:



Kristine Zonka, Chair

As Approved by the Brevard County Commission  
on:



DECEMBER 21, 2021

RACHEL M. SADOFF, CLERK