



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

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

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

| <u>COUNTY OFFICE</u> | <u>YES</u> | <u>NO</u> | <u>SIGNATURE</u> |
|-----------------------------|-------------------------------------|--------------------------|---|
| User Agency | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Fontanin, Edward <small>Digitally signed by Fontanin, Edward Date: 2021.07.09 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 09:38:20 -04'00'</small> |
| Risk Management | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Lairsey, Matt <small>Digitally signed by Lairsey, Matt Date: 2021.07.09 14:59:48 -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>COUNTY OFFICE</u> | <u>YES</u> | <u>NO</u> | <u>SIGNATURE</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

| <u>CM DATABASE REQUIRED FIELDS</u> | <u>Complete</u> <input checked="" type="checkbox"/> |
|---|--|
| 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 14th 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 | \$1,665.00 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 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.^a 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 14th, 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, 2021.

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.

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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:

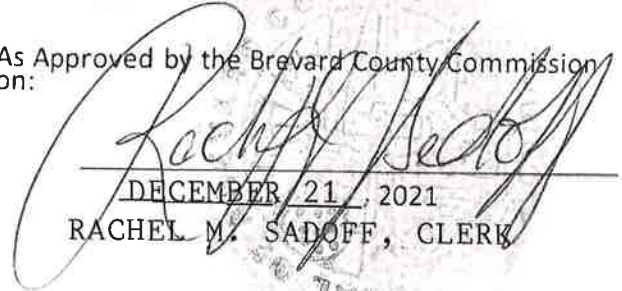
BREVARD COUNTY BOARD OF COUNTY
COMMISSIONERS

By:



Kristine Zonka, Chair

As Approved by the Brevard County Commission
on:



DECEMBER 21, 2021

RACHEL M. SADOFF, CLERK