



## **CONSTRUCTION CONTRACT**

Between

THE COUNTY OF VOLUSIA

AND

---

**Contract no. 1639**

**ITB no. 17-B-161JD**

County of Volusia  
Purchasing and Contracts Division  
123 West Indiana Avenue, Room 302  
Deland, Florida 32720-4608  
[www.volusia.org/purchasing](http://www.volusia.org/purchasing)

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**CONSTRUCTION CONTRACT FOR BASCULE BRIDGE OPERATION CONVERSION  
TO RELAYS FOR  
THE COUNTY OF VOLUSIA**

THIS CONTRACT is made and entered into by and between the COUNTY OF VOLUSIA, FLORIDA, a body corporate and politic and a political subdivision of the State of Florida, with its principal office located at 123 West Indiana Avenue, Deland, Florida 32720-4613 (the "County"); and \_\_\_\_\_, a corporation duly authorized to conduct business in the State of Florida, with its principal office located at \_\_\_\_\_ (the "Contractor").

**RECITALS:**

WHEREAS, the County desires to retain the Contractor in accordance with ITB no. 17-B-161JD (the "ITB"); and

WHEREAS, Contractor is competent and qualified to furnish the specified services to the County and desires to provide such services according to the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the mutual covenants, and considerations set forth in the Contract, the County and Contractor agree as set forth herein.

**ARTICLE 1 - THE CONTRACT DOCUMENTS & PERMITS**

1.1 The "Contract" between the County and Contractor consist of the Contract Documents which shall include the following: this Contract, the General Conditions, the Special Conditions [delete if no Special Conditions] on the job, the Contractor's Bid Documents, the Contract Plans and Technical Specifications (Contract Plans), Specifications and related forms and appendices, Addenda issued prior to execution of this Contract, Modifications issued after execution of this Contract, all of which form the Contract and are incorporated herein.

**1.2 Exhibits.**

1.2.1 The exhibits listed below are incorporated into and made a part of this Contract.

- 1.2.1.1 Exhibit "A" - General Conditions
- 1.2.1.2 Exhibit "B" - Special Conditions
- 1.2.1.3 Exhibit "C" - Bid Documents and Insurance Requirements
- 1.2.1.4 Exhibit "D" - Performance & Payment Bonds
- 1.2.1.5 Exhibit "E" - Drawings, Technical Specifications and Detours

1.3 Enumeration and clarification as to the applicability of some of the Contract Documents is further described below.

1.3.1 Contract Plans and Technical Specifications include the most recent versions of the following:

Knox Bridge Detour  
Knox Bridge Plans  
Main Street Detour  
Main Street Plans  
Technical Specifications

1.4 **Permits.** The County has secured the permits enumerated in Section 1.4.1 below. Contractor shall strictly comply with the requirements of the permits and the permitting agencies.

1.4.1 N/A

1.5 Contractor shall obtain and pay for any permits not enumerated in Section 1.4.1 above, as required to perform the Work and complete the Project.

1.6 **Authority for Contracting.**

1.6.1 By executing this Contract, the Contractor represents that it has visited the site, familiarized itself with the local conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation:

1.6.1.1 The location, conditions, layout and nature of the Project site and surround,

1.6.1.2 Anticipated labor supply and costs,

1.6.1.3 Availability and cost of materials, tools, equipment, and other similar issues, and

1.6.1.4 The County assumes no responsibility or liability for the physical conditions or safety of the Project site or any improvements located on the Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work and the County shall not be required to make any adjustment in either the agreed amount of the Contract Price or the Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements hereof.

1.6.2 This Contract between the County and the Contractor is intended solely for the benefit of the County and the Contractor and no other persons or entities. The

services to be performed hereunder shall be performed by the Contractor's own staff, unless otherwise authorized by the County. The employment of, contract with, or use of the services of any other person or firm by the Contractor, as consultant or otherwise, shall be subject to the prior written approval of the County. Such approval shall not be construed as constituting a Contract between the County and any such person or firm.

- 1.6.3 In the event the parties hereto enter into a subsequent Contract specifically modifying this Contract between County and Contractor, it is expressly agreed that such modification shall take precedence over this Contract to the extent of the modification only.
- 1.6.4 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.
- 1.6.5 Work not covered in the Contract Documents shall not be required unless it is consistent therewith and is reasonably inferable there from as being necessary to produce the intended results.
- 1.6.6 Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.6.7 The organization of the Technical Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any one of them.
- 1.6.8 **Order of Precedence.** If Contractor finds a conflict, error or discrepancy in the Contract Documents, it shall call it to the Architect/Engineer's attention, in writing, and request the Architect/Engineer's interpretation and direction before proceeding with the Work affected thereby. Such notice shall be provided by the Contractor to the Architect in a timely fashion so as not to cause additional costs due to delay. In resolving such conflicts, errors and discrepancies, the documents shall be given precedence in the following order:
  - 1.6.8.1 Modifications to the Contract
  - 1.6.8.2 This Contract between the County and Contractor
  - 1.6.8.3 Exhibits to this Contract
  - 1.6.8.4 Detailed (Technical) Specifications
  - 1.6.8.5 Project Plans (Drawings)
  - 1.6.8.6 Contractor's Bid Proposal
  - 1.6.8.7 Bonds and Guaranties

- 1.6.9 In the case of conflicts between drawings or between provisions of the specifications, the more detailed or specific of the conflicting provisions or representations shall take precedence. For example, where figured dimensions are shown on the drawings, they shall take precedence over scaled distances and scaled dimensions, and detail drawings shall govern over general drawings.
- 1.6.10 In those cases where it is not reasonably clear which of the conflicting provisions or representations is the more detailed or specific, the Contractor shall be deemed to have estimated on, and agreed to provide, the greater quantity or better quality of materials and work unless he shall have, prior to submitting the Contract Price, asked for and obtained a written decision of the A/E as to which quantity or quality or method or materials shall be required.

## **ARTICLE 2 - CONTRACTOR'S SERVICES AND TERM**

- 2.1 The Contractor agrees during the term of this Contract to timely complete projects as specified by the County ("Projects"). Contractors shall provide all survey, permits, labor, supervision, and equipment necessary to provide for construction services in accordance with specifications provided by the County in Exhibit "E", Drawings and Technical Specifications, other contract documents prepared by Volusia County, and all applicable building codes.
- 2.2 The Contractor shall diligently proceed with the completion of the Project in accordance with the date expressly set forth in the Notice to Proceed.
- 2.3 Liquidated Damages. If applicable, should the Contractor fail to timely meet the Work requirements of the Project by the Completion Date, the parties hereto agree that as liquidated damages, and not as penalty, the Contractor shall pay to the County THREE HUNDRED DOLLARS and no/100 (\$300.00) for each day after the Completion Date, until the Project is completed, as certified by the County Project Manager. The dollar amount for liquidated damages will be determined by the level of risk to the County. Liquidated damages will only be assessed to recover actual cost incurred by the County.
- 2.4.1 Term. The Work to be performed under this Contract shall be substantially completed within one hundred twenty six (126) days after delivery of notice from the County to Contractor to proceed ("Notice to Proceed"). The Work shall be fully completed fourteen (14) days after the actual date of substantial completion for a total contract time of one hundred forty (140) days after the Notice to Proceed.
- 2.5 Contractor shall at all times diligently pursue completion of the Work and shall make all commercially reasonable efforts to avoid delay in progress of the Work. Contractor shall promptly notify County if Contractor experiences any delay in performance of the Work.
- 2.6 In the event that the Contractor shall fall behind schedule at any time, for any reason, and such delay is adversely affecting the County's timely occupation of the Project for its

intended purpose, the County shall be entitled to direct acceleration or re-sequencing of the Work to bring the Project back on schedule. The Contractor shall reserve in each of its subcontracts entered into in connection with the Project, a right to accelerate consistent with the Contractor's obligations hereunder.

- 2.7 In the event the Contractor determines that the Completion Date cannot be met by re-sequencing the work, then the Contractor shall immediately provide the County, and in any event within three (3) days after the date of receipt of the County's instruction for re-sequencing or accelerating, a plan to complete the Project in the shortest possible time. No approval by the County of any plan for re-sequencing or accelerating of the work submitted by the Contractor pursuant to this clause shall constitute a waiver by the County of its rights of recovery of liquidated damages as a result of delayed Project completion.
- 2.8 **Change in Scope of Services/Work.** The County may order changes in the service consisting of additions, deletions, or other revisions within the general scope of the Contract, insurance and bond requirements, as applicable. No claims may be made by the Contractor to change the amount of compensation of the Contractor or other adjustments to the Scope of Services/Work, unless such changes or adjustments have been made by written amendment to this Contract and duly executed by the County. If the Contractor believes that any particular service is not within the Scope of Services/Work described in this Contract, is a material change, or will otherwise require more compensation to the Contractor, the Contractor shall immediately notify the County Project Manager in writing, of this belief. If the County Project Manager determines that the particular work is within the Scope of Services/Work, the Contractor shall continue with the work at the cost stated for the work within the scope. The Contractor shall assert a right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order and the assertion shall be written, and shall be sent in accordance with the notice requirements of Section 11.2 - Notice. No additional work shall be performed or extra materials purchased until an amendment or change order to this Contract has been fully executed by all parties.
- 2.8.1 Changes in the Services/Work shall be made in accordance with Section 10.4.2 of the General Conditions.
- 2.9 **Acceptance of Work.** Inspection of the finished work shall be performed by the County to determine the acceptability of the work for payment. As a result of said inspections, the County will provide the Contractor with a "punch list" of items considered by the County to be substandard. If after seven (7) days the Contractor fails to remedy all punch list items to the satisfaction of the County, the County may, but shall not be obligated to cause all such remaining items to be remedied through the use of other contractors and deduct the cost.
- 2.10 **Release of Liens.** The Contractor shall deliver to the County, a complete release of liens arising out of each project before receiving payment. If any liens remain unsatisfied after all payments are made, the Contractor shall refund to the County such amount as



the County may be compelled to pay in discharging such liens, including all costs and reasonable attorney's fees.

## 2.11 **Responsibility of the Contractor.**

2.11.1 All work shall be scheduled and performed during normal business hours (Monday to Friday, 8:00 a.m. to 5:00 p.m. EST) unless otherwise approved by the County.

2.11.2 The Contractor and County shall be jointly responsible for verifying unit quantities per project or per phase of each project. The Contractor shall be responsible for verifying the quantities and the removal of all materials identified in the project description, survey, plans, specifications and other contract documents. When asbestos removals are indicated, the requirement is to remove all regulated or non-friable asbestos-containing material from the locations and systems noted in the Project description, survey, plans, specifications and other contract documents. The requirement shall also to include incidental accessories that are a part of the system.

2.11.3 **General Provisions.** The Contractor shall supervise and direct the Work, using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract including coordination of the work of all Subcontractors.

2.11.3.1 Unless otherwise provided in the Contract Documents, Contractor shall furnish and pay for all labor, materials, equipment, tools, construction equipment and machinery, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work. The Contractor shall check all materials entering the Project site, including materials furnished under trade contracts, and labor performing any portion of the Work and shall keep full detailed accounts of such materials and labor.

2.11.3.2 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, cleaned and conditioned in accordance with manufacturers' recommendations. Likewise, materials and equipment shall be stored in accordance with manufacturers' recommendations, or in such a manner as to insure the preservation of their quality and fitness for incorporation in the Work. When considered necessary by the Architect, such materials and equipment shall be placed on wooden platforms or other elevated surfaces, and/or shall be placed under cover. Stored materials and equipment shall be located so as to facilitate prompt inspection.

2.11.3.3 Manage, schedule and direct the Work including the activity of Subcontractors and coordinate the performance of the Work, such as to complete the Project in accordance with County's objectives of cost, timeliness and quality.

2.11.3.4 The Contractor shall not be relieved from its obligations to perform the Work in strict accordance with the Contract Documents either by the activities or duties of the County or its representatives, or by inspections, tests or approvals required or performed by persons other than the Contractor, unless such deviation shall have been approved by the County in writing.

2.11.4 **Contractor's Project Site Organization.** Maintain a competent full-time staff at the Project site to coordinate and direct the Work and the progress of the Subcontractors on the Project. Identify an on-site senior staff member (Project Manager) to represent Contractor on a daily basis with authority to negotiate change orders and contract modifications on behalf of Contractor so as not to delay the progress of the Work. The Project Manager shall represent Contractor and all communications given to the Project Manager shall be as binding as if given to Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

2.11.4.1 **Key Management Personnel.** All of Contractor's on-site management and supervisory personnel shall be approved by the County prior to assignment to the Project and shall not be removed or replaced without County's consent. The County shall have the right to direct the Contractor to remove or replace any on-site personnel whose performance becomes unsatisfactory to the County. In such event the Contractor shall promptly replace such personnel.

2.11.4.2 **Superintendence.** The Contractor shall employ a competent Project Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. It shall be the responsibility of the Project Manager and Superintendent to coordinate the work of all Trade Contractors under contract with the Contractor.

2.11.4.3 **Labor Relations.** Develop, implement and administer as necessary an effective labor relations program for the Project in order to avoid labor disputes during performance of the Contract.

2.11.4.4 The Contractor shall at all times enforce strict discipline and good order among its employees and all Subcontractors under direct or indirect contract with the Contractor and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to it.

- 2.11.4.5 The Contractor shall be responsible to the County for the acts and omissions of its employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a direct or indirect contract with the Contractor.
- 2.11.4.6 Review the Project Schedule with the Subcontractors and, if necessary, expand the level of detail to incorporate specific Subcontractor input consistent with the overall completion requirements.
  - 2.11.4.6.1 Provide regular monitoring and updating of the Project Schedule and various sub-networks as construction progresses. Identify potential variances between scheduled and probable milestone dates.
  - 2.11.4.6.2 Review schedule for work not started or incomplete and take appropriate measures and action to meet the scheduled milestone dates.
  - 2.11.4.6.3 Provide summary reports of each monitoring and document all changes.
  - 2.11.4.6.4 Include regular schedule updates and reporting as part of the Progress Reports required in Exhibit "E" – Drawings and Technical Specifications.
  - 2.11.4.6.5 Display the current Project Schedule in the on-site office for review at progress meetings.
- 2.11.4.7 Determine the adequacy of the Subcontractors labor force and equipment and the availability of materials and supplies to meet the Project Schedule. Take necessary corrective actions when these requirements are not being met by any Subcontractor and advise the County of same.
- 2.11.4.8 Give all notices required by and exercise best efforts to ensure that all Work is performed and constructed so that it complies with the applicable laws and ordinances, the Plans and Specifications, requirements of regulatory agencies having jurisdiction on the Project including, without limitation, the requirements of the National Fire Prevention Association (NFPA), the State Fire Marshall, and the Occupational Safety and Health Administration (OSHA), and all codes governing public buildings, without, however, assuming any of the A/E's responsibilities for design in accordance therewith. The Contractor shall be responsible for performing all Work so that it is satisfactory to the regulatory agencies required to inspect and approve the Work. It is not the responsibility of Contractor to make certain that the Contract

Documents are in accordance with applicable laws, statutes, building codes and regulations unless such laws, statutes, building codes and regulations bear upon the performance of the Work by the Contractor. However, should the Contractor become aware of any conflicts, inconsistencies, or omissions in the Plans and Specifications which might result in work inconsistent with the requirements of such regulatory agencies, the Contractor shall, at once, notify the County and request its written instruction and interpretation of the Plans and Specifications. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the County, it shall assume full responsibility therefore and shall bear all costs attributable thereto.

2.11.5 **New Material.** The Contractor represents and warrants that the goods, materials, supplies, or components offered to the County under this contract are new, not used or reconditioned, and are not of such age or so deteriorated as to impair their usefulness or safety and that the goods, materials, supplies, or components offered are current production models of the respective manufacturer.

2.11.6 The Contractor shall be responsible for obtaining, and include in their price, any/all all permits and licenses necessary to perform any/all work specified. The Contractor shall act as the Owner's representative for purposes of preparing and submitting all required notifications, obtaining required permits, and paying all fees associated therein with the project.

2.11.7 When requested by the County, the Contractor shall maintain a current copy of one or all of the following documents at a particular job site:

2.11.7.1 Occupational Safety and Health Administration, Title 29, Code of Federal Regulations:

2.11.7.1.1 Section 1926.58 - Safety and Health Regulations for Construction.

2.11.7.1.2 Section 1910.20 - Access to Employee Exposure and Medical Records.

2.11.7.1.3 Section 1910.1200 - Hazard Communication.

2.11.7.1.4 Section 1910 Subpart S - Electrical (with copy of SBBC approved Lock-out Tag-out procedures for electrical, mechanical, pneumatic and hydraulic systems).

2.11.7.1.5 Section 1910 Subpart D - Walking Working Surfaces.

2.11.7.1.6 Section 1926.58 - Temporary Power.

2.11.7.1.7 Environmental Protection Agency Title 40 CFR Part 61 NESHAP:

2.11.7.1.7.1 Subpart A - General Provisions.

2.11.7.1.7.2 Subpart B - National Emission Standard for Asbestos.

2.11.7.1.7.3 Subpart M- National Emission Standard for Asbestos, Asbestos Stripping Work Practices and Disposal of Asbestos Waste.

2.11.7.1.8 Florida Statutes:

2.11.7.1.8.1 Chapter 553 – Building Construction Standard.

2.11.7.1.8.2 Chapter 255 – Asbestos Management Program.

2.11.7.1.8.3 Chapter 469 – Asbestos Contractor Licensing Requirements.

2.11.8 The Contractor shall be responsible for compliance of all relevant local, State, and Federal regulations including but not limited to the above mentioned regulations. Where compliance with two or more industry standards or sets of requirements is specified, and overlapping if those different standards or requirements establishes different or conflicting levels of quality, protection or service, the most stringent requirement is intended and shall be enforced. Except to the extent that more explicit or more stringent requirements are written directly into the contract documents, applicable standards of the construction industry have the same force and effect and are made part of the contract documents.

2.11.9 **Hazardous Materials.** The Contractor shall provide medical monitoring to any of his employees or agents that may be exposed to hazardous materials or substances in excess of background levels during any phase of a project. The Contractor shall assume full responsibility and liability for compliance with all applicable federal, state, and local regulations pertaining to the protection of workers, visitors to the site, and persons occupying areas adjacent to the site. The Contractor is responsible for providing medical examinations and maintaining medical records of Asbestos Containing Material (ACM) and Lead abatement personnel as required by the applicable federal, state, and local regulations. The Contractor shall hold the County of Volusia harmless for failure

to comply with any applicable safety and health regulation on the part of himself, his employees, and/or his Subcontractors.

2.11.10 **Utilities.** The Contractor shall be responsible for determining the adequacy of available utilities on-site. Where utilities are not available or are inadequate at the job site, the Contractor shall provide at their own expense, all necessary temporary utilities required for the work specified.

2.11.11 **Demolition Activities, Asbestos.** When applicable, if the structure qualifies, the Contractor shall at least ten (10) working days prior to the start of demolition activities, submit written notification of demolition of regulated asbestos (DEP FORM 62-257.900(1)) in accordance with FAC Chapter 62-257 via certified mail to:

Florida Department of Environmental Protection  
Air Program  
3319 Maguire Blvd., Suite 232  
Orlando, FL 32803-3767

2.11.11.1 The Contractor shall clean the work area at the end of each day's demolition activities. All visible debris shall be properly containerized prior to leaving the work area. The work area shall be secured after termination of the workday to prevent entry. The Contractor shall transport and dispose of asbestos waste in full compliance with 40 CFR 61, SUBPART A, 49 CFR 171 and 49 CFR 172 and disposal in a proper location including all fees related to disposal (i.e. tipping fees). The Contractor shall not be permitted to use County trash receptacles.

2.11.11.2 The Contractor shall be responsible for using engineering controls and work practice methods in accordance with 29 CFR 1926.

2.11.12 During the Project, the Contractor is responsible for security, fire safety and damage to equipment and other County property losses incurred by the Contractor and his labor force.

2.11.13 The County reserves the right to monitor/inspect, request work modifications, cease work or to have personnel removed from County property throughout the duration of this Contract.

2.11.14 The Contractor shall be responsible for the professional and technical accuracy of all services furnished by the Contractor and its Sub-Contractors under this Contract.

2.11.15 The Contractor shall serve as an expert witness for the County in any legal proceedings arising in connection with this Contract, if the County so requests.

- 2.12 **Representative of County.** All services authorized under this Contract shall be under the direction of the County Representative, who shall have final decision authority for all phases of the services, including general direction, review and approval of the services.
- 2.13 **Representative of Contractor.** Contractor shall, at all times during the normal work week, designate or appoint, one or more Project Managers who are authorized to act on behalf of Contractor regarding all matters involving the conduct of the performance pursuant to this Contract and Project, and shall keep the County Project Manager continually advised of such designation.
- 2.14 **Continuing the Work.** The Contractor shall carry on the Work or Services and adhere to the progress schedule during all disputes of this Contract with the County. No Work or Services shall be delayed or postponed pending resolution of any disputes of this Contract, except as specifically set forth herein, or as the County and Contractor may otherwise agree in writing.
- 2.14.1 **Informal Dispute Resolution:** If a dispute arises between the parties concerning a Request for Information, Change Order, Field Change Orders, a unit price or quantity of any material(s), the cost of labor, or interpretation of the specifications in any Contract Document, regardless of whether or not a change in said unit price or quantity of any material(s), cost of labor, or interpretation of the specifications would result in an increase, decrease, or no change in the total Contract Price of this Contract, and the parties (i.e., Contractor's designated representative and County's designated representatives (i.e., Architect/Engineer and County Project Manager) are unable to resolve such dispute within five (5) calendar days of notice from the other party of the dispute, then within five (5) calendar days thereafter, the applicable Project Manager and Consultant for the County and Project Manager for the Contractor shall promptly bring the disputed matter to a informal mediation conference at a date, time, and location mutually agreeable to all parties. The County and Contractor shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding.
- 2.14.2 **Formal Dispute Resolution:** See Article 7 of this Contract.
- 2.14.3 Each party agrees to bear its own costs and attorneys fees relating to any dispute resolution procedures described in this section including without limitation attorneys fees and costs, and any travel or related expenses of personnel or senior management whose presence may be deemed necessary to resolve such issues, disputes or controversies.
- 2.15 **Deliverables.** The Contractor shall deliver to the County any and all reports and any other deliverable required under the Project in a format approved by the County.
- 2.16 **Time is of the Essence.** Time is of the essence for all Projects performed in accordance herewith.

- 2.17 **Standards.** The Contractor shall be responsible for the professional quality and the accuracy of all deliverables and services provided under this Contract and shall, without additional compensation, correct any errors in the same. Deliverables prepared by the Contractor in response to the requirements of this Contract shall, unless otherwise provided for in this Contract, be thoroughly researched for accuracy of content, be grammatically correct and not contain errors, be numerically accurate, be submitted in the format approved in advance by the County Project Manager, and be submitted for advance review and comment by the County Project Manager. The cost of correcting errors, correcting report data, or making other revisions required to bring the deliverable into compliance with the requirements of this Contract shall be borne solely by the Contractor.
- 2.18 **Value Engineering.** The Contractor shall review the plans and specifications as prepared by the A/E and perform value engineering services. The County Representative, the A/E and the Contractor shall review the proposed changes and the County shall determine which shall be incorporated into the plans and specifications. As an optional service, the Contractor may be called upon to develop these changes into drawing formats generally compatible with the existing plans and specifications. The fee for this optional work will be determined when required.
- 2.19 **Project Site Facilities.** Review the Plans and Specifications to ensure that they contain provision for all temporary facilities required for the performance, management, inspection and supervision of the Work

### **ARTICLE 3 - SCOPE OF SERVICES/WORK AND CLAIMS**

- 3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described in the Contract Documents. Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to completely perform the Work and complete the Project in accordance with the Contract Documents.

The Improvements under this Contract consist of replacing the existing PLC control, including but not limited to: verify wiring, install new wiring and prepare for new desk, set up detour, disconnect and remove old desk, install new desk and connect, install new PLC, test bridge operations, remove detour.

- 3.2 Changes in the Work shall made in accordance with Section 10.4.2 of the General Conditions.
- 3.3 **Claims by Contractor.** When the Contractor deems that extra compensation or a time extension is due beyond that agreed to by the County, whether due to delay, additional work, altered work, differing site conditions, breach of Contract, or for any other cause, the Contractor shall follow the procedures set forth in these Contract Documents for preservation, presentation and resolution of the claim.

Submission of timely notice of intent to file a claim, time extension request, and the certified written claim, together with full and complete claim documentation, are each a



condition precedent to the Contractor bringing any court, arbitration, or other formal claims resolution proceeding against the County for the items and for the sums or time set forth in the Contractor's written claim. The failure to provide such notice of intent, time extension request, written claim and full and complete claim documentation within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim.

**3.3.1 Content of Written Claim.** As a condition precedent to the Contractor being entitled to additional compensation or a time extension under the Contract Documents, for any claim, the Contractor shall submit a written claim to the County which will include for each individual claim, at a minimum, the following information:

- 3.3.1.1 A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected and included in each claim;
- 3.3.1.2 The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident;
- 3.3.1.3 Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;
- 3.3.1.4 Identification of the provisions of the Contract Documents which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract Documents which allegedly have been breached and the actions constituting such breach;
- 3.3.1.5 A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:
  - 3.3.1.5.1 Documented additional job site labor expenses;
  - 3.3.1.5.2 Documented additional cost of materials and supplies;
  - 3.3.1.5.3 A list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each;
  - 3.3.1.5.4 Any other additional direct costs or damages and the documents in support thereof;
  - 3.3.1.5.5 Any additional indirect costs or damages and all documentation in support thereof.
- 3.3.1.6 A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the

number of days claimed for each identified event, circumstance or occurrence.

3.3.2 **Compensation for Delay.** Notwithstanding anything to the contrary contained in the Contract Documents, additional Contract Time shall be the Contractor's sole remedy for any delay other than to perform extra work caused by the County unless the delay shall have been caused by acts constituting willful or intentional interference by the County with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to the County of such interference. The parties anticipate that delays may be caused by or arise from any number of events during the performance of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental Contracts, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the County pursuant to the Contract Documents, shop drawing approval process delays, expansion of the physical limits of the Project to make it functional, weather, weekends, holidays, special events, suspension of Contract Time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

3.3.3 **Non-Recoverable Items.** The parties agree that for any claim the County will not have liability for the following items of damages or expense:

3.3.3.1 Loss of profit, incentives or bonuses;

3.3.3.2 Any claim for other than extra work or delay;

3.3.3.3 Consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, diminution of business value, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;

3.3.3.4 Acceleration costs and expenses, except where the County has expressly and specifically directed the Contractor in writing "to accelerate at the County's expense"; nor

3.3.3.5 Attorney fees, claims preparation expenses and costs of litigation.

## ARTICLE 4 - COMPENSATION; PAYMENTS; PUNCHLIST

- 4.1 **Compensation.** As consideration for the Contractor satisfactorily completing the Project in accordance with the terms and conditions of this Contract, the County agrees to pay the Contractor a dollar amount equal to Contractor's "Total Base Bid," **TBD (\$0.00)**, plus the total actual expense incurred as direct bond premiums and costs, estimated in the line designated as "Performance and Payment Bonds," **TBD (\$0.00)**, as shown in Exhibit "D" hereto. The Contract Price shall be **TBD (\$0.00)**. Performance and Payment Bond prices are subject to adjustment based on actual premiums paid.
- 4.1.1 The Compensation shall not be adjusted because of errors or omissions which are not the fault of the County in computing the Project costs which result in an increase in the cost to Contractor to perform this Contract or because the time for completion varies from the original estimate, including completion or substantial completion of this Contract prior to the scheduled or Contract completion date or on account of County's election to furnish any of the Work or Services.
- 4.2 **Payments.** In each invoice for payment, the Contractor shall certify as follows:
- 4.2.1 Contractor shall deliver with the invoice, as a condition precedent to payment thereof, waivers of lien for each of its Subcontractors. The Contractor may, if any Subcontractor refuses to furnish a release in full, furnish a bond satisfactory to the County against any lien.
- 4.2.2 Contractor shall deliver with the invoice, as a condition precedent to payment thereof, a letter certifying the proper removal of lead and/or asbestos in accordance with Florida, federal and local laws.
- 4.2.3 The County shall promptly review each invoice for payment and make such exceptions, as the County reasonably deems necessary or appropriate under the state of circumstances then prevailing.
- 4.2.4 Based upon the approved invoice, the County shall make payment to Contractor in the amount approved, subject, however, to the provisions of Section 4.2, herein. The payment of any invoice for payment by the County does not constitute approval or acceptance of that part of the Project to which such payment relates or relieve the Contractor of any of its obligations hereunder with respect hereto.
- 4.2.5 In accordance with Florida Statute § 255.078, the County shall retain ten percent (10%) of the gross amount of each monthly payment request or ten percent (10%) of the portion thereof approved by the county representative for payment until 50-percent completion of the project. After 50-percent completion of the project, retainage shall be reduced to five percent (5%) of each payment. Such sum shall be accumulated and not released to Contractor until final payment is due. Any interim interest on such sums shall accrue to the County.

- 4.2.6 Contractor shall submit a monthly Application for Progress Payment to the County in a form provided by the County, which may require execution of a separate or integrated Contractor's Release and Affidavit. The period covered by each Application for Progress Payment shall be one calendar month unless otherwise agreed in writing. The County shall process the Application for Progress Payment in accordance with the Local Government Prompt Payment Act; Florida Statutes §218.70-.80 and the Contract Documents.
- 4.2.7 The Application for Progress Payment shall be supported by documents and data as required by the County to substantiate its accuracy. The Contractor and County shall agree on a schedule of values as a basis for reviewing the Contractor's Applications for Progress Payment.
- 4.2.8 Subject to other provisions of the Contract Documents, the amount of each payment shall be determined by multiplying the percentage of completion of a designated portion of the Work as listed in the agreed schedule of values, by the lump sum Contract Sum allocated to that portion of the Work, less retainage, or in the case of a unit price pay item, by multiplying the unit price per item by the number of units incorporated into the Project, less retainage. Where items are listed for payment as lump sum units and the Contract Plans do not show estimates of component quantities, the Contractor is solely responsible for his own estimates of such quantities. For those items having variable final pay quantities that are dependent on actual field conditions, use and measurement, the quantities shown in the Plans and in the proposal form are approximate and provide only a basis for calculating the bid upon which the County awarded the Contract.
- 4.2.9 Contractor shall include in its Application for Progress Payment, that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the Project site for incorporation into completed construction, less retainage.
- 4.2.10 Retainage shall be withheld in accordance with Florida Statute §218.735. Contractor may submit a payment request for all retainage withheld in accordance with §218.735(7)(e); after submission of the final invoice.
- 4.2.11 Contractor shall pay its subcontractors and suppliers in accordance with Florida Statute §218.735(6). Contractor shall require its subcontractors to pay all of the subcontractor's subcontractors in accordance with §218.735(6).
- 4.2.12 Per Florida Statute §255.05(11), the County may condition payment of a Progress Payment or Final Payment on the production of a release, waiver or like documentation from a claimant demonstrating that the claimant does not have an outstanding claim against the contractor, the surety, the payment bond, or the County for payments due on labor services or materials furnished on the project

unless the Contractor provides the County with a written consent from the surety regarding the Project or payment in question. No party requiring a release from a claimant may require use of a form other than those specified in Florida Statute §255.05(2)(b-c).

- 4.2.13 Contractor shall prepare and submit an Application for Final Payment when Contractor believes in good faith that Substantial Completion of the Work has been achieved. The County shall review the application and perform a Substantial Completion inspection.
- 4.2.14 Within ten (10) days of certification of Substantial Completion, the County shall provide Contractor a preliminary list of items required to render the Work complete, satisfactory and acceptable to the County. The Contractor shall provide any comments, including Contractors estimated time to complete all items on the list, to the County in writing within five (5) days of receipt of the preliminary list from the County. The County shall review the Contractors written comments and deliver to Contractor a final list of items within five (5) days of receipt of Contractor's comments. Contractor shall perform all items on the final list within thirty (30) days of receipt from the County unless otherwise agreed in writing by the County.
- 4.2.15 Contractor shall notify the County and the Project Manager that the Project is ready for Final Inspection upon completion of all items on the final list. The County will then schedule the Final Inspection, in coordination with the Contractor. The Final Inspection shall be conducted by the County, within ten (10) days of the Contractor's notification to the County. Following the Final Inspection, the County shall provide the Contractor a list of any additional items for corrective action and conduct an additional inspection, if necessary, to ensure that the Work has been completed.
- 4.2.16 The County reserves the right, if it discovers an error in the partial or final quantity estimates used for payments, or if it discovers that the Contractor performed defective Work or used defective materials, after the Final Payment has been made, to claim and recover from the Contractor or his surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the Work and materials.
- 4.2.17 Contractor shall retain all records pertaining to the Project for a period of three years from the date of the County's final acceptance of the Project. Upon request, Contractor shall make all such records available to the County or its representative. For the purpose of this Article, records include all books of account, supporting documents, and papers that the County deems necessary to ensure compliance with the Contract.

4.2.17 Any provisions hereof, to the contrary notwithstanding, the County shall not be obligated to make current payment to the Contractor hereunder if any one of the following conditions exists:

4.2.17.1 The Contractor fails to diligently prosecute the work in an efficient, timely, and workmanlike manner and in strict accordance with the provisions of the Contract Documents; or

4.2.17.2 The Contractor fails to use an adequate number of qualified personnel and sufficient equipment to complete the Project without undue delay; or

4.2.17.3 The Contractor fails to make prompt payments to its Subcontractors, suppliers, materialmen, or laborers; or

4.2.17.4 The Contractor is otherwise in default of any of its obligations hereunder or otherwise is in default under any of its contractual requirements; or

4.2.17.5 The Contractor failed to provide a certified letter of the proper removal of lead and/or asbestos; or

4.2.17.6 Any discrepancies between the County's records and the Contractor's submittals must be rectified, to County's satisfaction, by the Contractor before the County makes payment on those items. The Contractor shall only issue invoices for services rendered. Pursuant to Chapter 218, Florida Statutes, the County will pay interest not to exceed one percent (1%) per month on all undisputed invoices not paid within twenty (20) days after receipt and acceptance of the service, and receipt by the County of a properly completed invoice, whichever is later. Invoices for payments hereunder shall be submitted to the Project Manager.

4.2.17.7 To be deemed proper, all invoices shall comply with the requirements set forth in this Contract and shall be submitted on the form and pursuant to instructions prescribed by the County.

4.3 **Cost of the Work.** The Cost of the Work shall include, without limitation, the cost items set forth as follows:

4.3.1 The cost of all materials, supplies and equipment incorporated in the Work and the cost of transportation and storage thereof. The County, at its sole discretion, may make payment for materials, supplies or equipment stored off-site;

4.3.2 Payments made by the Contractor to its Sucontractors for work performed for the Project under trade or subcontract contracts;

- 4.3.3 The cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers, which are used and consumed in the performance of the Work and the cost, less salvage value, on items used but not consumed which remain the property of the Contractor. This cost shall not include the cost of materials, supplies, equipment, temporary facilities and hand tools furnished by Subcontractors as part of their trade work which shall be incorporated in the trade contracts cost;
- 4.3.4 Rental charges of all necessary motor vehicles, machinery and equipment, including hand tools, whether rented from the Contractor or others, and including transportation and delivery costs, installation, maintenance, repair and replacement, and dismantling and removal, at rental charges consistent with those prevailing in the area of the Project;
- 4.3.5 Actual cost, without mark-up, of the premium for all insurance and bonds which the Contractor is required to provide pursuant to this Contract;
- 4.3.6 Sales, use, gross receipt, or similar taxes related to the performance of the Work, imposed by any governmental authority and for which the Contractor is liable;
- 4.3.7 Building and operating permit fees, inspection and filing fees, sewer and water fees and deposits lost for causes other than Contractor's own negligence;
- 4.3.8 Losses, expenses or damages to the extent not compensated by insurance or otherwise, including settlement made with the written approval of the County;
- 4.3.9 The cost of corrective work (within the Contract Price limit);
- 4.3.10 Minor expenses such as telegrams, long-distance telephone calls, telephone service at the Project site, postage, office supplies, and similar items;
- 4.3.11 Cost of debris and trash removal including daily cleanup;
- 4.3.12 Cost of final cleanup prior to occupancy including window washing, dusting of all surfaces, carpet cleaning and vacuuming, floor polishing, fixture cleaning etc;
- 4.3.13 Cost related to emergencies affecting the safety of persons and loss of property;
- 4.3.14 Legal costs properly resulting from prosecution of the Work for the County, provided that they are not the result of Contractor's own negligence or malfeasance. Legal costs incurred in connection with disputes with the County shall not be included in the Cost of the Work;
- 4.3.15 Cost of items related to the Project Safety Program including barricades, firefighting equipment and extinguishers, special and protective wearing apparel

and safety equipment, temporary roads and parking, dust and noise control, installation and operation of temporary hoists, scaffolds, ladders and runways, and likely items;

- 4.3.16 Cost of watchmen or similar security services;
  - 4.3.17 Cost of survey, measurement and layout work required for the proper execution of the Work;
  - 4.3.18 Cost of purchase or rental of office equipment such as typewriters, cameras, radio communications, computers, pagers, copiers, dictating units, and other items such as office and tool trailers, vehicles and furniture purchased by Contractor in connection with the Work;
  - 4.3.19 Cost of preparation of shop drawings, coordination drawings, photographs, and "as-built" documentation;
  - 4.3.20 Cost of data processing, computerized scheduling and document reproduction services required in the performance of the Work; and
  - 4.3.21 Costs incurred during the warranty period after completion of the Project (within the Contract Price).
  - 4.3.22 Overhead and any other costs incurred by the Contractor in the performance of the Contract; and,
- 4.4 Adjustments of the Compensation shall be made only as follows:
- 4.4.1 For approved changes in the Work (additional), an increase to the fee in an equitable amount to be included in the Change Order.
  - 4.4.2 If the Contractor is placed in charge of the reconstruction of any insured or uninsured loss, the fee shall be increased in the same proportion pursuant to Sections 2.8 – Change in Scope of Services/Work, and 4.4.1, above.
- 4.5 The Compensation shall include only those taxes which are legally enacted at the time the Compensation is established. Taxes included in the Compensation shall be segregated by category of taxes so that the County may insure that the tax exemptions applicable to County are excluded from the Compensation.
- 4.6 The value included in the Compensation for General Conditions and supervision shall be defined as a fixed amount and agreed upon by the County and the Contractor at the time the Compensation is accepted by the County. The County and the Contractor further agree that the provisions of Section 4.1, hereof, in reference to the Compensation line item budgeted amount adjustment affecting the Compensation, as applicable to the General Conditions and supervision total amount, shall be limited and shall not exceed



the agreed fixed amount by more than a maximum of ten percent (10%), if absolutely necessary. All cost savings, if any, shall be returned to the County as part of the net aggregate savings established at the time the final accounting is submitted, at the completion of the Work.

- 4.7 **Exclusions.** The Compensation shall not include such Project expenses as cost of site, site survey and subsurface investigations, professional design fees, inspection services or moveable equipment and furnishings.

## **ARTICLE 5 - PERSONNEL OF CONTRACTOR AND SUBCONTRACTORS**

- 5.1 **Supervision.** The Contractor shall direct and supervise competent and qualified personnel and shall devote time and attention to the direction of the operation to insure performance of obligations and duties as set forth herein. The Contractor shall hire, compensate, supervise, and terminate members of its work force, and the Contractor shall direct and control the manner in which work is performed including conditions under which individuals will be assigned duties, how individuals will report, and the hours individuals will perform. The Contractor shall be responsible for all income tax, social security and Medicare taxes, federal unemployment taxes, and any other withholdings from the company's employees' and/or Subcontractor's wages or salaries. Benefits, if any, for the Contractor's employees and/or Subcontractors shall be the responsibility of the Contractor including, but not limited to, health and life insurance, retirement, liability/risk coverage, and workers' and unemployment compensation.
- 5.2 **Applicable Laws.** Contractor shall be responsible for ensuring that its employees, agents, and Subcontractors comply with all applicable laws and regulations and meet all federal, state, and local requirements related to their employment and position.
- 5.3 **Right of Rejection.** During the term of this Contract, the County shall have the right of reasonable rejection and approval of the staff of the Contractor or other representatives assigned to the work by the Contractor. If the County reasonably rejects the staff or representative of the Contractor, Contractor shall provide replacement satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's employees or others working on behalf of the Contractor are the sole responsibility of the Contractor.
- 5.4 **Prior Approval.** In the event the Contractor, during the course of the work under this Contract, requires the services of any Subcontractors, suppliers, other persons or organizations in connection with service covered by this Contract, the Contractor must secure the prior written approval of the County. The County's acceptance of any such Subcontractors, suppliers, other persons or organization so identified, may be revoked on the basis of reasonable objection after due investigation, in which case the Contractor shall submit an acceptable substitute. No acceptance by the County of any such Subcontractor, supplier, other person or organization shall constitute a waiver of any right of the County to reject defective work. Contractor shall remain fully responsible for the services of said Subcontractors, suppliers, other persons or organizations. The

Contractor shall require all Subcontractors or outside associates employed in connection with the performance Work under this Contract to comply fully with the terms and conditions of Sections 3, 10, and 11, of this Contract.

5.5 **Contractor's Payment of Subcontractors.** Contractor shall save and hold the County harmless from any and all claims or actions by Contractor's Subcontractors, Sub-subcontractors for payment of monies such Subcontractor or Sub-subcontractor claims to be owed by Contractor by Subcontractor for Work performed under this Contract.

5.5.1 Contractor shall pay its subcontractors and suppliers in accordance with Florida Statute §218.735(6). Contractor shall require its subcontractors to pay all of the subcontractor's subcontractors in accordance with §218.735(6).

5.6 Nothing in this Contract shall create any obligation on the part of the County to pay directly to any Subcontractor of Contractor or Sub-subcontractor of Subcontractor any monies due to such Subcontractor, or claims of a Subcontractor or Sub-subcontractor of Subcontractor for amounts owed by Contractor to Subcontractor for Work performed under this Contract

## **ARTICLE 6 - INSURANCE AND BONDS**

6.1 Insurance requirements (see Exhibit "C.1").

6.2 The provisions of this Article shall survive the cancellation or termination of the Contract to the extent required to maintain coverage for losses arising out of performance of the Work by Contractor, its employees, agents and all persons or entities performing any portion of the Work via direct or indirect contract with the Contractor.

6.3 In the event Change Orders exceed the estimated Contract Price, Contractor shall be required to obtain additional insurance to meet the new Contract Price.

6.3 Prior to commencing Work, Contractor shall execute and record in the public records of Volusia County, a payment and performance bond with a surety insurer authorized to do business in Florida as surety. The bond(s) shall be in the form of those attached in Exhibit D hereto and shall in all respects be governed by Florida Statute §255.05 and the provisions of the Contract Documents.

6.4 The provisions of this article shall survive the cancellation, termination or expiration of the Contract to the extent necessary to provide required coverage for the Contractor's performance of the Work.

## **ARTICLE 7 - DISPUTE RESOLUTION**

7.1 The parties to this Contract shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Contract in accordance with the

provisions set forth in this Section. The Contractor and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Contract and any applicable Scope of Services/Work. Issues shall be escalated to successive management levels as needed.

- 7.2 Contractor and County shall not allow any dispute to adversely affect the progress of the Work unless continuing the Work would likely result in dangerous conditions on the Project, danger to the public, or reasonably certain irreparable financial harm.
- 7.3 Contractor and County agree that all contractual provisions with respect to making claims, providing notice of default and opportunity to cure or termination, must be performed unless mutually waived in writing, as a condition precedent to initiating any dispute resolution process.
- 7.4 If a dispute develops between the parties concerning any provision of this Contract, or the interpretation thereof, or any conduct by the other party under these Contracts, and the parties are unable to resolve such dispute within five (5) days, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project Manager or designated representative, as the case may be, of the other party in writing ("Dispute Notice") in order to resolve such dispute.
- 7.5 Upon issuance of a Dispute Notice, the Project Managers or designated representative shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative within five (5) business days, the Project Managers shall escalate the dispute as indicated below.

Business Days	Contractor's Representative	County Representative
5	Contractor	Project Manager
10	Contractor's Engagement Manager	Director of Purchasing
10	Contractor's Business Unit Manager or Designee	Chief Financial Officer

- 7.6 **Formal Dispute Resolution.** At any point after issuance of a Dispute Notice under this section, either party may initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation, in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for

court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction pursuant to this Contract.

- 7.7 Each party agrees to bear its own costs and attorneys fees relating to any dispute resolution procedures described in this section including without limitation attorneys fees and costs, and any travel or related expenses of personnel or senior management whose presence may be necessary to resolve such issues, disputes or controversies.
- 7.8 **Mediation.** Contractor and County shall engage in non-binding mediation as a condition precedent to the initiation of litigation. The parties shall select a mutually agreeable Florida Supreme Court Certified Circuit Civil Mediator experienced and knowledgeable in construction law and/or large construction projects, within thirty (30) days of a request for mediation from the other party. The mediation shall occur at a mutually agreeable time, but not more than one-hundred twenty (120) days after the selection of a mediator, unless otherwise agreed in writing. The Florida Statutes and Florida Rules of Civil Procedure applicable to mediation shall apply. Notwithstanding the foregoing, Contractor and County agree that if they agree on a compromise and settlement, it would necessarily have to be presented in good faith to the entire county council at open meeting before it could be finalized, and such public presentation shall not be considered a breach of the confidentiality requirements of mediation. Each party shall bear their own costs and attorneys' fees. The mediation shall occur in Volusia County unless otherwise mutually agreed in writing. Any Contract reached at mediation shall be enforceable in a court of competent jurisdiction.
- 7.9 **Litigation.** For any claim subject to, but not resolved by mediation, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction. Florida law shall prevail in any litigation. Venue shall lie exclusively in the Seventh Judicial Circuit in and for Volusia County, Florida, for state court actions, and in the Orlando Division of the Middle District of Florida for federal court actions. Parties shall bear their own costs and attorney's fees related to any litigation and appeals.
- 7.10 In the event of a claim by County against the Contractor, the County may, but is not obligated to, notify the Surety of the nature and amount of the claim. If the claim relates to a possibility of a Contractor's default, the County may, but is not obligated to, notify the surety and request the surety's assistance in resolving the dispute.

## **ARTICLE 8 - TERMINATION AND SUSPENSION**

- 8.1 The performance of Services under this Contract may be terminated by the County in accordance with this Article 8 – Termination and Suspension, in whole or in part from time to time, for (1) a material breach subject to Article 7 - Dispute Resolution; (2)

nonappropriation of funds; or, (3) for convenience (upon at least thirty (30) calendar days, prior written notice to Contractor) whenever the County shall determine that such termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of Work under this Contract is terminated, and the subsequent date upon which such termination becomes effective.

8.2 After receipt of a Notice of Termination, and except as otherwise directed by the County, the Contractor shall:

8.2.1 Stop work under this Contract on the date and to the extent specified in the Notice of Termination.

8.2.2 Place no further orders or subcontracts for materials, Services or Work or facilities, except as may be necessary for completion of such portion of the Work under this Contract, as it is not terminated.

8.2.3 Terminate all orders and subcontracts pursuant to this Article 8 – Termination and Suspension to the extent that they relate to the performance of Services or Work terminated by the Notice of Termination.

8.2.4 Assign to the County, in the manner, at the times and to the extent directed by the County, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the County shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

8.2.5 With the approval of the County and to the extent required by the County, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts. County's approval of such settlements shall be final for all the purposes of Article 8 – Termination and Suspension.

8.2.6 Transfer title and deliver to the County, in the manner, at the times, and to the extent, if any, directed by the County:

8.2.6.1 The designs, specifications, reports, studies, plans, bulletins, schedules, estimates, other documentation and/or other Work-in-process, completed Work or Services, supplies, and other materials produced as a part of, or acquired in connection with the performance of the Work or Services terminated by the Notice of Termination; and,

8.2.6.2 The completed or partially completed designs, specifications, reports, studies, plans, bulletins, schedules, estimates or other documentation which, if this Contract has been completed, would have been required to be furnished to the County.

8.2.7 Complete performance of such part of the Work or Services as shall not have been terminated by the Notice of Termination.

**8.3 Termination by the Contractor.**

8.3.1 The Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive days through no act of fault of the Contractor or its agents or employees or any other persons or entities performing portions of the Work in direct or indirect contract with the Contractor for the following reasons:

8.3.1.1 Issuance of an order of court or other government entity with jurisdiction over the Project requiring a stoppage of Work; or

8.3.1.2 Failure of the County to certify an application for payment without cause in accordance with the provisions of this Contract and Florida Statutes

8.3.2 The Contractor may terminate the Contract if, through no act of fault of the Contractor or its agents or employees or any other persons or entities performing portions of the Work in direct or indirect contract with the Contractor, the County causes repeated suspensions, delays or other interruptions which cause total cessation of performance of the Work by Contractor for more than 150 days in a 365 day period.

8.3.3 If one of the conditions in Sections 8.3.1.1 or 8.3.1.2, above exist, Contractor may give County thirty (30) days written notice to the County, terminate the Contract and Contractor shall be entitled to payment from the County for all Work actually performed, and costs directly incurred by reason of the termination. Upon failure of the Contractor to submit its termination claim within the time allowed, the County may determine on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

**8.4 Termination by County for Cause.**

8.4.1 The County may terminate the Contract if the Contractor:

8.4.1.1 Repeatedly refuses or fails to provide adequate manpower, equipment or proper materials to perform the Work on schedule;

8.4.1.1 Fails to make payment to Subcontractors for labor or materials in accordance with Florida Statutes or the terms of the subcontract Contracts;

8.4.1.2 Repeatedly fails to abide by applicable laws, statutes, ordinances, codes, rules, regulations, or orders of a government entity having jurisdiction over the Project;

- 8.4.1.3 Fails to perform the Work in a manner that meets or exceeds the industry standard for a similarly situated Contractor on a Project of this type;
  - 8.4.1.4 Failures to cure a substantial and material breach of the Contract provisions;
  - 8.4.1.5 Is adjudged as bankrupt or insolvent, or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for Contractor or for any of its property, or if it files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
  - 8.4.1.6 Fails to follow the instructions of the County or County's representative or otherwise violates any material provision(s) of the Contract Documents, which if uncured in a timely manner could cause damages to the County.
- 8.4.2 If County determines a condition described in Section 8.4.1 exists, County may, without prejudice to other rights or remedies and upon giving notice to the Surety, terminate the Contractor upon ten (10) days written notice and may, subject to the prior rights of Surety, if any:
- 8.4.2.1 Exclude the Contractor from the Project and take possession of all materials, equipment tools and construction equipment and machinery thereon owned by the Contractor;
  - 8.4.2.2 Accept assignment of subcontracts; and
  - 8.4.2.3 Withhold any further payment from Contractor until the Work is complete;
  - 8.4.2.4 Finish the Work by whatever commercially reasonable method the County chooses. County shall maintain a detailed accounting of the costs incurred by the County to finish the Work.
- 8.4.3 If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including County's cost of compensation to the CEI (if any) and other direct costs made necessary thereby, and other damages incurred by the County not expressly waived, the difference shall be paid to the Contractor. If such costs to the County exceed the unpaid Contract Sum, the Contractor shall pay the difference to the County.

## **8.5 Termination for Cause – Breach.**

8.5.1 Subject to completion of the dispute resolution procedures set forth in Article 7 - Dispute Resolution, either party may, at its option, terminate this Contract in the event of a material breach of the other party by providing the breaching party thirty (30) days' prior written notice of termination delivered in accordance with Section 11.2 - Notice hereof, which notice shall identify and describe with specificity the basis for such termination. If, prior to the expiration of the notice period, the breaching party either:

8.5.1.1 Cures the noticed breach as evidenced by written confirmation of the cure delivered by the non-breaching party in accordance with Section 11.2 – Notice and non-breaching party accepts cure; or

8.5.1.2 Submits to the non-breaching party a plan satisfactory to the non-breaching party to cure the noticed breach and cures the breach to the satisfaction of the non-breaching party within the time period agreed upon in the plan as evidenced by written confirmation of the cure delivered by the non-breaching party in accordance with Section 11.2 – Notice hereof within the period contained in such plan to cure, then this Contract shall not be terminated for the noticed breach.

8.5.2 In the event the breaching party fails to cure the noticed breach within the time period set forth in this Article 9 - Term and Termination, this Contract may be terminated at the end of the 30 day cure period (or longer time period for cure if agreed in writing by the parties) and the non-breaching party can sue the breaching party for damages and/or specific performance under this Contract and seek such other remedies as may be available under Florida law.

8.5.3 In the event Contractor fails to cure a noticed breach within the time period set forth in Section 8.5 and County terminates this Contract, in addition to the remedy described in Section 8.5, the County shall have the unfettered right to solicit, re-solicit and/or to contract for goods, Work or Services from any contractor, including Contractor's Subcontractors or Sub-subcontractors, to complete the Project.

## **8.6 Termination for Non-appropriation.**

8.6.1 This Contract may be terminated in whole or in part by the County if the County does not appropriate the funding in any fiscal year necessary to pay the Compensation set forth in Article 4 – Compensation; Payments; Punchlist. Any such termination shall be effected by the delivery of Notice of Termination in accordance with Section 11.2 – Notice. A Notice of Termination shall specify the extent to which this Contract is terminated and the date upon which termination will become effective.



- 8.6.2 In the event that this Contract is terminated in whole for nonappropriation by the County or Contractor and subject to Article 4 – Compensation; Payments; Punchlist, and Article 8 – Termination and Suspension, Contractor shall be paid in accordance with terms of this Article to the date of termination on a prorated basis for any milestone or Deliverable designated for payment under this Contract that was started but not completed. Notwithstanding the foregoing, County's obligation to pay Contractor under Article 4 – Compensation; Payments; Punchlist and this Contract is limited to the budgeted amount for the fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract and is otherwise limited to legally available non-ad valorem tax revenues. Contractor shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation set forth in Article 4 – Compensation; Payments; Punchlist. Upon being notified of County's election to terminate or Contractor election to terminate, Contractor and its Subcontractors shall refrain from performing further work or incurring additional expenses under the terms of this Contract which is not specifically authorized in the Notice of Termination.
- 8.6.3 In the event of termination by the County for nonappropriation, for all items or products ordered by Contractor before receipt by Contractor of the Notice of Termination which Contractor could not cancel without imposition of a fee, the County shall cause payments to be made to Contractor within thirty (30) days of receipt of an undisputed invoice for all cancellation, restocking or residual fees resulting from the cancellation or return of third party products ordered from or shipped by the vendor thereof prior to the effective date of the termination.

**8.7 Suspension by County for Convenience.**

- 8.7.1 The County may order the Contractor in writing to suspend, delay or interrupt a portion or all of the Work, without cause.
- 8.7.2 The Contract Time and Contract Sum may be adjusted on account of any suspension, delay or interruption pursuant to Section 8.7, in accordance with the Contract Documents, but no adjustment shall be required if:
- 8.7.2.1 And to the extent the performance is or would have been suspended by another cause for which the Contractor or those in direct or indirect contract with the Contractor are responsible; or
- 8.7.2.2 And to the extent that an equitable adjustment is made or denied under another provision of the Contract Documents accounting for the suspension.

## 8.8 Termination by the County for Convenience.

8.8.1 The County may terminate the Contract for convenience without cause upon thirty (30) days written notice to Contractor. Upon written notice from the County, the Contractor shall:

8.8.1.1 Cease operations as directed by the County in the notice;

8.8.1.2 Protect and preserve the Work in place and stored materials; and

8.8.1.3 Assign subcontracts and purchase orders as directed by the County;

8.8.1.4 Except as otherwise directed by the County, terminate all subcontracts and purchase orders effective on the termination date provided in the notice of termination and cease entering any new subcontracts or purchase orders.

8.8.2 If termination of this Contract occurs for any reason:

8.8.2.1 Except as otherwise provided in this Contract, Contractor shall return to the County all County Confidential Information in Contractor's possession and shall certify in a written document signed by the Contractor and County Representative or any Amendment thereto then, in accordance with Section 11.2 - Notice that all such information has been returned.

8.8.2.2 Except as provided in herein, the County shall return to Contractor or destroy all Contractor Confidential Information in the County's possession (including, without limitation, all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment or other documents or property relating to such Contractor Confidential Information and all copies of any of the foregoing (in whatever medium recorded) and all third-party products in its possession not yet accepted and not yet paid for in full together with all copies of documentation and other material related thereto, and shall certify in a written document signed by the County Project Manager and Contractor or any amendment thereto that all such information and material has been returned or destroyed.

8.8.2.3 For all undisputed outstanding invoices submitted to the County prior to the effective date of the termination and subject to Article 4 – Compensation; Payments; Punchlist, and this Article 8 – Termination and Suspension, the County shall cause payments to be made to Contractor within thirty (30) days of receipt of invoice. Contractor shall invoice the County for any sums Contractor claims to be owed by County under this Contract for work performed from the last invoice to the effective date of termination. County will review such invoice for payment within fifteen (15) days of receipt and County will pay any

undisputed amount within thirty (30) days, subject to.

- 8.9 If the Contractor's failure to perform and default arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor (such causes may include, but are not restricted to acts of God, acts of the public enemy, acts of the County in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor and the Contractor, within ten (10) days from the beginning of any such delay notifies the County in writing of the causes of delay, then the County, in its sole discretion, shall ascertain the facts and the extent of delay and extend the time for completing the Project when the findings of fact justify such an extension.
- 8.10 If, after Notice of Termination of this Contract for default, it is determined for any reason that the Contractor was not in default or that the default was excusable under the provisions of paragraph above, the rights and obligations of the parties shall be the same as if the Notice of Termination had not been issued pursuant to this Article 9 – Term and Termination.
- 8.11 Any provision of this Contract that imposes or contemplates continuing obligations on a party, will survive the expiration or termination of this Contract.
- 8.12 If County terminates pursuant to Section 8.7, Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, plus commercially reasonable overhead and profit on the Work not executed.

## ARTICLE 9 - LIMITATION OF LIABILITY

- 9.1 **Sovereign Immunity.** The County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with section 768.28, Florida Statutes (as amended). Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the County beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature and the cap on the amount and liability of the County for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.
- 9.2 **No Third Party Beneficiaries.** Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.
- 9.3 **Indemnification.**
- 9.3.1 The Contractor shall indemnify and hold harmless the County, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence,

recklessness, or intentional wrongful misconduct of Contractor and persons employed by, contracted directly or indirectly with or otherwise utilized by Contractor in the performance of the Contract.

- 9.3.2 In all claims against the County or any of its public officials (elected and appointed), successors and successors in interest, officers, agents, attorneys, and employees by any employee of Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor, consultant or any subcontractor or subconsultant under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 9.4 In no event shall Contractor or County be liable for consequential, special, incidental, indirect, exemplary, or punitive damages.
- 9.5 **Claims Notice.** The Contractor shall timely report in writing to the County's Director of Risk Management any incident which it believes might result in claims against the County under any of the coverages mentioned herein.

Name: County of Volusia, Florida  
Personnel/Risk Management Division  
Address: 230 North Woodland Boulevard, Suite 250  
DeLand, Florida 32720  
Telephone: 386-736-5963  
Fax: 386-822-5006

#### **ARTICLE 10 - GOVERNMENT COMPLIANCE**

- 10.1 **Employment of Illegal Aliens.** The Contractor certifies that it does not and will not, during the performance of the Contract, employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986 (as amended).
- 10.2 **Nondiscrimination and Americans with Disabilities Act.** Contractor shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Contract. Contractor agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any Services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In performing under this Contract, Contractor agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for work under this Contract because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, 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, gender, sexual orientation, age, national origin, political affiliation, or disability.

10.2.1 In accordance with the American Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing a special accommodation to participate in the proceedings, or an interpreter to participate in any proceedings, should contact the county's ADA Coordinator at 386-248-1760 for assistance, at least two business days before any meeting date. Assisted listening system receivers are available for the hearing impaired, and can be obtained from the Deputy Clerk by contacting the county's ADA Coordinator at 386-248-1760. Read the full [ADA Notice](#) under The American with Disabilities Act (Title II). Read the [County of Volusia Grievance Procedure](#) under The Americans with Disabilities Act (Title II).

10.3 **Fair Labor Standards Act.** The Contractor and any Subcontractor shall pay all employees working on this Contract, not less than the minimum wage specified in the Fair Labor Standards Act (as amended).

10.4 **Drug-Free and Smoke-Free Workplace.** The County of Volusia is a drug-free and smoke-free workplace. Contractor agrees that its personnel and the personnel of each of its Subcontractors agree to adhere to the County's policies on drug-free and smoke-free work place during the term of this Contract.

10.5 **Modifications Due To Public Welfare or Change in Law.** The County shall have the power to make changes in this Contract as the result of changes in law and/or ordinances of Volusia County to impose new rules and regulations on Contractor under this Contract relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare. The County shall give Contractor notice of any proposed change and an opportunity to be heard concerning those matters. In the event any future change in Federal, State or County law or the ordinances of Volusia County materially alters the obligations of Contractor, or the benefits to the County, then this Contract shall be amended consistent therewith. Nothing contained in this Contract shall require any party to perform any act or function contrary to law. The County and Contractor agree to enter into good faith negotiations regarding modifications to this Contract, which may be required in order to implement changes in the interest of the public welfare or due to change in law.

10.6 **Compliance with Laws.**

10.6.1 The Contractor shall be responsible to know and to apply all applicable federal and state laws, all local laws, ordinances, rules, regulations, and all orders and decrees of bodies having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Contractor shall always observe and comply with all such laws, ordinances, rules, regulations, orders and decrees whether or not they are specifically included or referenced by name in the Contract Documents.

- 10.6.2 All licenses and permits required to perform Contractor's duties under this contract whether such license or permit is required by the federal government, State of Florida, Volusia County, or any municipality, shall be at Contractor's sole cost and expense, and shall not be a cost of the County. All required licenses and permits shall be maintained in full force and effect during the term of this contract.
- 10.7 **Truth-In-Negotiation Certificate.** The signature on this Contract by Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual Unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of Contracting.
- 10.8 **Public Records Law.** Pursuant to section 119.0701(2)(a), Florida Statutes, the County is required to provide Contractor with this statement:

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 386-736-5935, [purchasing@volusia.org](mailto:purchasing@volusia.org), by mail at 123 W. Indiana Ave., RM 302 DeLand, FL 32720.**

By entering into this Contract, Contractor acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Contract are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any Contractor entering into a contract for services with the County is required to:

- 10.8.1 Keep and maintain public records required by the County to perform the services and work provided pursuant to this Contract.
- 10.8.2 Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- 10.8.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the County.
- 10.8.4 Upon completion of the Contract, transfer, at no cost, to the County all public records in the possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the Contract, the Contractor

shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. 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.

10.8.5 Requests to inspect or copy public records relating to the County's Contract for services must be made directly to the County. If Contractor receives any such request, Contractor shall instruct the requestor to contact the County. If the County does not possess the records requested, the County shall immediately notify the Contractor of such request, and the Contractor must provide the records to the County or otherwise allow the records to be inspected or copied within a reasonable time.

10.8.6 Contractor acknowledges that failure to provide the public records to the County within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.

10.8.7 Contractor further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the County.

Contractor shall indemnify, defend, and hold the County harmless from and against any and all claims, damage awards, and causes of action arising from the Contractor's failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorney's fees and costs arising therefrom. Contractor authorizes County to seek declaratory, injunctive, or other appropriate relief against Contractor from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

10.9 **Audit Right and Retention of Records.** Contractor agrees to maintain such financial records and other records as may be prescribed by the County or by applicable federal and state laws, rules, and regulations. County shall have the right to audit the books, records, and accounts of Contractor that are directly related to this Contract. Contractor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Contract. Contractor shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for the required retention period of the Public Records Act (if applicable, or, if the Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Public Records Act is determined by County to be applicable to Contractor' records,

Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry.

**10.10 Payments Subject to Appropriation.** Notwithstanding any other term or provision of this Contract, the continuation of this Contract beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes.

**10.11 Prohibition Against Contingent Fees.**

10.11.1 The Contractor warrants that he or she or it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Contract and that he or she or it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor any fee, commission, compensation, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, the County shall have the right to terminate this Contract without liability and, at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

10.11.2 Contractor understands any acknowledges that any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for the Contractor, who offers, agrees, or contracts to solicit or secure County contracts for services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of a contract for services shall, upon conviction in a competent court of this State, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes (as amended).

10.11.3 Any County official, agent or employee who offers to solicit or secure, or solicits or secures, a contract for services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such a contract for professional services between the County and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

**10.12 Public Entity Crime and Discriminatory Vendor List.** Pursuant to Florida Statutory requirements, Contractor is hereby notified of the contents of the following statutory provision:



- 10.12.1 **Section 287.133(2)(a)(as amended):** 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, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- 10.12.2 **Section 287.133(2)(b)(as amended):** A public entity may not accept any bid, proposal, or reply from, award any contract to, or transact any business in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO with any person or affiliate on the convicted vendor list for a period of 36 months following the date that person or affiliate was placed on the convicted vendor list unless that person or affiliate has been removed from the list pursuant to paragraph (3)(f). A public entity that was transacting business with a person at the time of the commission of a public entity crime resulting in that person being placed on the convicted vendor list may not accept any bid, proposal, or reply from, award any contract to, or transact any business with any other person who is under the same, or substantially the same, control as the person whose name appears on the convicted vendor list so long as that person's name appears on the convicted vendor list.
- 10.12.3 **Section 287.134(2)(a)(as amended):** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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.
- 10.12.4 **Section 287.134(2)(b)(as amended):** A public entity may not accept any bid, proposals, or replies from, award any contract to, or transact any business with any entity or affiliate on the discriminatory vendor list for a period of 36 months following the date that entity or affiliate was placed on the discriminatory vendor list unless that entity or affiliate has been removed from the list pursuant to paragraph (3)(f). A public entity that was transacting business with an entity at the time of the discrimination resulting in that entity being placed on the discriminatory vendor list may not accept any bid, proposal, or reply from, award any contract to, or transact any business with any other entity who is under the

same, or substantially the same, control as the entity whose name appears on the discriminatory vendor list so long as that entity's name appears on the discriminatory vendor list.

- 10.13 By signing this Contract, the Contractor represents and warrants that it is not violating Section 287.133, Florida Statutes, or Section 287.134, Florida Statutes.
- 10.14 In addition to the foregoing, the Contractor represents and warrants that Contractor is not under investigation for violation of such statutes and should Contractor prepare to use a Subcontractor or professional associate, Contractor shall require such Subcontractor or professional associate to sign an affidavit that the individual or entity is not under investigation nor in violation of these statutes.
- 10.15 **E-Verify.** The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor on or after the effective date of this Contract and thereafter during the remaining term of the Contract, including sub-contractors.
- 10.16 **Lead Based Paint Prevention Act (34 CFR, Part 35).** The Contractor covenants and agrees that it shall comply with the Lead Based Paint Prevention Act (34 CFR, Part 35), which requires prohibition of the use of lead-based paint in renovation, modernization structures, or other improvement activities.
- 10.17 **Material Safety Data Sheet.** In accordance with Chapter 442, Florida Statutes, it is the Contractor's responsibility to identify and to provide to the County a Material Safety Data Sheet for any material as may apply to this Contract.
- 10.18 **Anti-Lobbying.**
- 10.18.1 If this Project is funded by federal funds, then to the best of the County's knowledge and belief:
- 10.18.1.1 No Federal appropriated funds have been paid or shall be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Contract.
- 10.18.1.2 If any funds other than Federal appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of

Congress in connection with this Federal contract, grant, loan, or cooperative Contract, it shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

10.19 **Safety.** The Contractor shall take the necessary precautions and bear the sole responsibility for the safety of the methods employed in performing the work. The Contractor shall at all times comply with the regulations set forth by federal, state, and local laws, rules, and regulations concerning "OSHA" and all applicable state labor laws, regulations, and standards.

10.20 **Background Checks.** Contractor and County understand that certain areas of the County's premises may not be available to Contractor's personnel without passing required background checks. If access is not required to perform the services contemplated by this Contract, background checks will not be required.

**ARTICLE 11 - MISCELLANEOUS PROVISIONS**

11.1 **Entire Contract.** This Contract constitutes the entire Contract between the parties. There are no understandings or Contracts related hereto other than those which are expressed herein, and all prior negotiations, Contracts, and understandings, whether oral or written, are superseded by this Contract, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

11.2 **Notice.** All notices required under this Contract shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

<b>In the case of County:</b>	<b>with a copies of legal notices to:</b>
County of Volusia Attn: Director of Purchasing & Contracts Address: 123 W. Indiana Ave., Room 302 DeLand, Florida 32720 Phone: 386-736-5935 Fax: 386-736-5972	County of Volusia Attn: County Attorney Address: 123 W. Indiana Ave., Room 301 DeLand, Florida 32720 Phone: 386-736-5950 Fax: 386-736-5990
<b>In the case of Contractor:</b>	<b>with a copy of legal notices to:</b>
_____  Attn: _____	_____  Attn: _____

Address:  
Phone:  
Fax:

Address:  
Phone:  
Fax:

- 11.3 **Governing Law.** The laws of the State of Florida and the Code of Ordinances of the County of Volusia, Florida, shall govern this Contract. All questions concerning the validity, operation, interpretation, construction and enforcement of any terms, covenants or conditions of this Contract shall in all respects be governed by and determined in accordance with the laws of the State of Florida and Code of Ordinances of County of Volusia, without giving effect to the choice of law principles thereof and unless otherwise preempted by federal law.
- 11.4 **Venue and Jurisdiction.** The venue for any litigation between the parties arising under this Contract shall be exclusively in the County of Volusia, Florida, unless the litigation is exclusively cognizable in federal court and venue shall then be exclusively in the United States District Court, Middle District of Florida in Orlando, Florida. Each party hereby agrees to submit to the personal jurisdiction of these courts for any lawsuits filed there against such party arising under or in connection with this Contract.
- 11.5 **Assignment.** Contractor may not assign or otherwise convey Contractor's rights and/or obligations under this Contract without obtaining County's prior written consent, which consent County may withhold, limit and/or condition in County's sole discretion, including, but not limited to posting a performance bond. Any consent by the County under this Section shall be by written amendment to the Contract in a form and substance specified by the County in its sole discretion. If Contractor desires to assign or otherwise convey its rights and/or obligations under this Contract, Contractor no less than thirty (30) days prior to the assignment's proposed effective date, provide County with a written request for County's consent. Failure to provide such notice may result in the County assessing a processing fee of Five Hundred Dollars (US \$500.00).
- 11.5.1 Failure by the Contractor to obtain the County's consent in accordance with this Section prior to assignment or other conveyance shall: 1) constitute a material breach of the Contract; and 2) entitle the County to retain any and all legal rights, claims and defense to enforce this Section, including, but not limited to, injunctive, declaratory, damages and attorney's fees and costs. Payment of any sum by the County in accordance with the Contract to the Contractor or any person or entity prior to the Contractor obtaining the County's consent to the assignment shall not constitute a waiver of the rights of the County under this Section.
- 11.5.2 Nothing herein shall preclude the right of the County to waive its rights under this Section but no waiver shall be granted by the County without amendment to the Contract.

- 11.6 **Waiver of Jury Trial.** Contractor and County hereby expressly waive any rights either may have to a trial by jury of any civil litigation related to the Contract for any litigation limited solely to the parties of this Contract.
- 11.7 **Attorneys Fees and Costs.** Unless otherwise specifically stated herein, each party shall pay its own costs and attorney's fees relating to any dispute, mediation or litigation arising out of this Contract.
- 11.8 **Severability.** The invalidity or unenforceability of any provisions of this Contract or the Contract Documents shall not affect the validity or enforceability of any other provision of the Contract or the Contract Documents, which shall remain in full force and effect.
- 11.9 **Waiver.** Failure by either party or both parties to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Contract.
- 12.10 **Amendment.** No modification, amendment, change order, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same formality as this Contract and executed by a duly authorized official of each party.
- 12.11 **Headings.** Any paragraph and/or section headings used in this Contract are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Contract.
- 12.13 **Compliance with FEMA 2 CFR 200.18-326 and Appendix II Contract Provisions:**

This Agreement and the products/services provided may be utilized in the event of declared State/Federal Emergency and Contractors shall be prepared to comply with the requirements of the FEMA Super Circular CFR 200. 318-326 and Appendix II Contract Provisions as amended. These documents can be found on the Internet at:

<https://www.gpo.gov/fdsys/granule/CFR-2014-title2-vol1/CFR-2014-title2-vol1-sec200-318>

12.13.1 **Davis-Bacon Act Clause:**

12.13.1.1 <https://www.wdol.gov/dba.aspx>

12.13.2 **Copeland "Anti Kickback" Act Clause:**

12.13.2.1 **Compliance with the Copeland "Anti-Kickback" Act:**

12.13.2.1.1 (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the

requirements of 29 C.F. R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

12.13.2.1.2 (2) Subcontractors. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

12.13.2.1.3 (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

12.13.3 **Contract Work Hours and Safety Standards Clause:**

12.13.3.1 Compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

12.13.4 **Clean Air Act and the Federal Water Pollution Control Act:**

12.13.4.1 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

IN WITNESS WHEREOF, the parties have made and executed this Construction Contract for Bascule Bridge Operation Conversion to Relays, the day and year below written.

**CONTRACTOR:** \_\_\_\_\_

(Seal)

BY: \_\_\_\_\_  
(Type or print name)

BY: \_\_\_\_\_  
(Signature)

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

---

**COUNTY OF VOLUSIA**  
**BY: COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA**

(Seal)

COUNTY COUNCIL  
VOLUSIA COUNTY, FLORIDA

By: \_\_\_\_\_  
Ed Kelley  
County Chair

ATTEST:

By: \_\_\_\_\_  
James T. Dinneen  
County Manager

County Council Approval Date: \_\_\_\_\_

**GENERAL CONDITIONS**

**EXHIBIT "A"**

**GENERAL CONDITIONS**

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## GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS

Whenever in the Contract Documents or performance of the contract, the following terms are used (applicable to both the singular and plural), the intent and meaning of such items shall be interpreted as follows:

- 1.1 Acceptance. A formal action by the County of accepting a portion of the Work as being complete after inspection by the County representative. See also, Final Acceptance.
- 1.2 Affidavit. An instrument, the form of which shall be provided by the County, which Contractor must provide as a condition precedent to certification of an Application for Progress Payment or as a condition precedent to certification of the Application for Final Payment, unless the County has received an applicable Consent of Surety.
- 1.3 Application for Progress Payment. May refer to the actual written form or the Contractor's act of submitting the written form to the County to request payment for a portion of the Work prior to an Application for Final Payment. The actual form shall be supplied by the County.
- 1.4 Bid or Bid Documents. The Contractor's written submission to the County in response to the invitation to bid (ITB) issued by the County for this Project.
- 1.5 Calendar Day. Any day, including Saturdays, Sundays, and holidays, regardless of weather conditions. All references to a "day" in the Contract Documents, shall mean a Calendar Day unless specifically otherwise designated.
- 1.6 Change Directive. A written order, signed by the County, directing a change in the Work to Contractor which may or may not ultimately result in an increase in Contract Sum or Contract Time. A Change Directive shall be utilized when the County determines in its sole discretion that the change in Work is necessary to the Project but the resulting change in Contract Time or Contract Sum, if any, either cannot be or has not yet been calculated, or the County and Contractor have not reached an agreement on any change in Contract Time or Contract Sum. The Contractor shall proceed with the Work required by the Change Directive and may preserve any claim in accordance with the Contract Documents.
- 1.7 Change Order. A written Modification to the Contract signed by the County and Contractor documenting an addition, deletion, or revision in the Work, with or without an adjustment in the Contract Sum or Contract Time.

## GENERAL CONDITIONS

- 1.8 Construction, Engineering & Inspection (CEI) or / Architect/Engineer (A/E). A person or entity selected by the County to perform Work under a separate written Contract with the County to perform consulting work on the Project related to project administration supplemental to that performed directly by the County Engineer and County staff. In the event there is no CEI or A/E on the Project, but a task is reference in the Contract Documents as being performed by the CEI or A/E, then it shall be agreed that the term "County" or "Engineer," shall be substituted.
- 1.9 Contract. The sum of all legal rights and obligations between the Contractor and the County as defined by the Contract Documents and applicable law.
- 1.10 Contractor's Project Manager. The individual responsible for the day-to-day administration of the Project for the Contractor who shall have authority to act on behalf of and bind the Contractor in matters pertaining to the Project unless otherwise expressed in writing by the Contractor.
- 1.11 Consent of Surety. A document executed by the Contractor's surety indicating that it consents to the County making Final Payment to the Contractor and that the surety agrees it shall not be relieved of any obligations under the bond to the County as a result of consenting to or the making of Final Payment.
- 1.12 Contract Documents. The Contract Documents comprise the entire written Contract between the County and the Contractor, and are made part of the Contract, and include the documents enumerated in Article 1 of the Construction Contract.
- 1.13 Contract Sum. The total monies payable to the Contractor as consideration for completion of the Work in accordance with the Contract Documents.
- 1.14 Contract Time. The number of consecutive days, as stated in Article 2 of the Construction Contract, during which the Contractor shall perform the Work.
- 1.15 Contractor. The entity identified in the Construction Contract and referred to throughout the Contract Documents as if singular in number. The Contractor shall designate in writing a representative(s) who shall have the express authority to bind the Contractor with respect to all matters under the Contract. The "Contractor" means the Contractor or its authorized representative(s).
- 1.16 Contractor's Release. A document or language within a document such as an Application for Progress Payment or Application for Final Payment wherein the Contractor agrees to release and discharge County and the CEI or A/E from all claims and demands related to a designated portion of

## GENERAL CONDITIONS

the Work, except any claims for retainage or disputed claims, upon receipt of payment from the County.

- 1.17 County. The County of Volusia, Florida, a political subdivision of the State of Florida for whom the Work is to be performed, and referred to throughout the Contract Documents as if singular in number. See also, County Engineer, below.
- 1.18 County Engineer. The County Engineer is the employee of the County who shall have the express authority to bind the County with respect to all matters requiring the County's approval or authorization. Phrases, such as "by the County" or "to the County," refer to the County Engineer or his delegate, which may include the County's designated Project Manager or CEI or A/E. No person shall be presumed to have authority to bind the County to Modifications that change the Contract Sum or Contract Time without express written consent of the County Engineer. In some instances the County Engineer may be required by County ordinance or policy to request the approval of the County Manager or County Council to effectuate changes in Contract Sum, Contract Time or significant changes in Scope of Work.
- 1.19 County Project Manager. The County employee or authorized representative of the CEI or A/E who is assigned to the Project and is responsible for the day-to-day administration of the Project for the County. The County may change the Project Manager at any time by providing notice to the Contractor.
- 1.20 Contract Plans. The official approved drawings or plans or exact reproductions thereof, which have been prepared and signed and sealed by an engineer on behalf of the County and shall be utilized by the Contractor, which show the location, character, dimensions and details of the Work to be done and which are considered as part of the Contract Documents, including, but not necessarily limited to those Contract Plans enumerated in Article 1.2.1 of the Construction Contract.
- 1.21 Engineer. References to the "Engineer" shall be presumed to refer to the County Engineer.
- 1.22 Engineer of Record. The professional engineer or engineering firm contracted or employed by the County and registered in the State of Florida who is responsible for the preparation of the plans and specifications. The engineer of record may be County in-house staff or a consultant retained by the County.
- 1.23 Field Order. A written instrument issued by the County to the Contractor, which clarifies or interprets the Contract Plans or Specifications or other Contract Documents, and/or orders minor variations in the Work, but which does not involve an adjustment in Contract Sum or Contract Time.

## GENERAL CONDITIONS

- 1.24 Final Completion. The date the County certifies that all Work required to complete the Project is complete.
- 1.25 Final Payment. The final payment by the County to the Contractor for all sums due and retained by the County pursuant to the Contract.
- 1.26 Laborer. Any person other than an architect, landscape architect, engineer, surveyor and mapper, and the like who, under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and does not furnish materials or labor service of others.
- 1.27 Lump Sum Pay Item. A pay item within the Contract Documents, bid by the Contractor as a total dollar amount inclusive of all labor and material required to furnish the item and paid for by percentage of completion in place for a given application for payment, as certified by the County.
- 1.28 Materialman. Any person who furnishes materials under Contract to the County, Contractor, subcontractor, or sub-subcontractor on the site of the improvement or for direct delivery to the site of the improvement or, for specially fabricated materials, off the site of the improvement for the particular improvement, and who performs no labor in the installation thereof.
- 1.29 Modification. A Modification is a written change to the Contract Documents resulting in a clarification or change to the Scope of Work or material terms of the Contract, which may or may not include changes to the Contract Plans, the Contract Sum or the Contract Time. Changes to Contract Sum or Contract Time, shall be made in strict accordance with the Construction Contract. Modifications may include a Field Order, Change Directive or Change Order.
- 1.30 Notice to Proceed (NTP). The official document from the County to the Contractor establishing a date on which the Contract Time will commence.
- 1.31 Payment & Performance Bond. A bond(s), issued by a surety in accordance with §255.05 Florida Statutes, Article 8 of the Construction Contract and Article 5 of these General Conditions.
- 1.32 Person. The word “person” shall mean and includes any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or capacity, whether appointed by a court or otherwise, and any combination of individuals or “persons.”
- 1.33 Pre-Construction Conference. A meeting or meetings including the Contractor’s key personnel, key subcontractors, the CEI or A/E (if applicable), County and others involved with the planning and execution of the Work, which shall take place prior to issuance of a Notice to Proceed.

## GENERAL CONDITIONS

- 1.34 Progress Payment. A monthly payment made by the County to the Contractor after submission of an Application for Progress Payment by Contractor and subsequent issuance of a Certificate for Payment by the County.
- 1.35 Project. The sum of all construction activity related to the Contract Documents.
- 1.36 Request for Information. A written submission by Contractor to the County requesting clarification or instruction with respect to the Contract Documents or means and methods related to the Work.
- 1.37 Resident Project Representative. An employee of the County or an authorized representative of the CEI or A/E who is assigned to the Project and is responsible for overseeing that the Work is constructed in accordance with the requirements of the drawings and specifications.
- 1.38 Scope of Work or Work. The construction and services required by the Contract Documents including all labor, materials, equipment and services incidental thereto, provided or to be provided by the Contractor to fulfill the Contractor's obligation to achieve Final Completion of the Project.
- 1.39 Shop Drawings. All diagrams, illustrations, brochures, schedules, and/or other data which are prepared by Contractor, a subcontractor, manufacturer, supplier, distributor, or other person on behalf of the Contractor, and which illustrate the equipment, material, or some portion of the Work.
- 1.40 Subcontractor. A person other than a materialman or laborer who enters into a contract with the Contractor for the performance of any part of the Work. Unless expressly stated otherwise, reference to a "Subcontractor" or "subcontractor" shall have the same meaning and shall include sub-subcontractor's and lower tier contractors as well.
- 1.41 Sub-subcontractor. A person other than a materialman or laborer who enters into a contract with a Subcontractor for the performance of any part of the Work included in the Subcontractor's contract with the Contractor.
- 1.42 Substantial Completion. The date upon which the progress of the Work is sufficiently complete in accordance with the Contract Documents so that the County can occupy or utilize the Work for its intended purpose, as certified by the County.
- 1.43 Surety. The entity that has undertaken the duty of obligor on the Payment & Performance Bond provided by the Contractor in accordance with the Contract Documents and §255.05 Florida Statutes.

## GENERAL CONDITIONS

- 1.44 Superintendent. The Contractor's authorized executive representative(s) responsible for the job site and progress of the Work at all times.

## ARTICLE 2 - PRELIMINARY MATTERS

- 2.1 The County relied upon the accuracy of all forms submitted in response to the Invitation to Bid in its decision to enter a Contract with Contractor for performance of the Work. Regardless of whether or not all forms required to be submitted in response to the ITB, are incorporated into the Contract Documents by reference, failure to submit any required form or knowing or negligent submission of inaccurate information on the forms shall be considered a material breach of the Contract.

- 2.2 Delivery of Bonds.

The Contractor shall deliver to the County the required Payment & Performance Bond in accordance with §255.05 Florida Statutes, Article 5.3 herein and Article 6.3, of the Construction Contract. The Contractor shall record the bonds at the County of Volusia Clerk of the Court at Contractor's expense.

- 2.3 Contractor's Pre-Start Representations.

Contractor represents that it has familiarized itself with, and assumes full responsibility for having familiarized itself with, the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that it has correlated its study and observations with the requirements of the Contract Documents. Contractor also represents that to the extent it deems necessary it has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in Article 4.2 herein and made such additional surveys and investigations as it deems necessary for the performance of the Work at the Contract Sum in accordance with the requirements of the Contract Documents and that it has correlated the results of all such data with the requirements of the Contract Documents.

- 2.4 Commencement of Contract Time; Notice to Proceed.

A Notice to Proceed (NTP) may be issued at any time after the County executes the Contract Documents and after the occurrence of the Pre-Construction Conference.

## **GENERAL CONDITIONS**

### **2.5 Before Starting Construction.**

- 2.5.1 Before undertaking any part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. It shall at once report in writing to the County any conflict, error, or discrepancy which it may discover.
- 2.5.2 Within ten (10) days after the County receives the signed Contract from the Contractor, Contractor shall submit to the County a tentative progress schedule indicating the starting and completion dates of the various stages of the Work, a preliminary schedule of shop drawing submissions and the completed schedule of values.
- 2.5.3 Within twenty (20) days after the County receives the signed Contract from the Contractor, but before starting the Work at the site, a Preconstruction Conference will be held by the County to review the above schedules, to establish procedures for handling Shop Drawings, processing Applications for Progress Payment, preparation and maintenance of record drawings, Modifications, use of premises, safety procedures and housekeeping. The County Representative; County Project Manager; CEI or A/E, if not the County Representative; Resident Project Representative, if applicable; Contractor and their Superintendent(s); Subcontractors and their Superintendents; key suppliers and any other representatives of parties involved in the Project and others as required by the County shall be present at the Preconstruction Conference.

### **2.6 Starting the Project.**

Contractor shall not commence actual construction activity at the site prior to the date of commencement indicated in the Notice to Proceed without written authorization from the County.

## **ARTICLE 3 - CORRELATION, INTERPRETATION, AND INTENT OF CONTRACT DOCUMENTS**

### **3.1 Intent.**

It is the intent of the Contract Plans and Specifications to describe a complete project to be constructed in accordance with the Contract Documents and to include all items necessary for the proper execution and completion of the Work. The Contract Documents comprise the entire Contract between County and the Contractor. They may be altered only by a Modification in accordance with the Contract Documents.

## GENERAL CONDITIONS

### 3.2 Contract Documents.

The Contract Documents are intended to be complementary; what is called for by one is as binding as if called for by all. The contractor shall review the contract documents and if there is a conflict, error, discrepancy, or omission in these documents, it shall call it to the County's attention in writing, at once, and before proceeding with the Work affected thereby. Generally, written figure dimensions on drawings shall govern over scale dimensions, and detailed drawings shall govern over general drawings. Any Work that may reasonably be inferred from the Contract Documents, as being required to produce the intended result shall be supplied by the Contractor whether or not it is specifically stated in the Contract Documents. Work, materials, or equipment described in words, which so applied, have a well-known technical or trade meaning shall be deemed to refer to such recognized meanings.

### 3.3 Variance of Conditions.

3.3.1 If the Contractor believes that any conditions met by it are at variance with the conditions shown by the Contract Documents, that there is any conflict, error, discrepancy or omission in the Contract Documents, or that any instructions given by the County are at variance with the Contract Documents, it shall notify the County in writing within seventy-two (72) hours of the discovery of such conflict, variance, error, discrepancy, or omission, specifying the same. No Work affected by such conflict, variance, error, discrepancy, or omission shall be done, except in the case of emergency endangering life or property, which would result in a claim by the Contractor for extra compensation until the question has been resolved as herein specified and in accordance with the Construction Contract. The Contractor shall, however, proceed with other Work not in question or affected thereby and not deemed by it to entitle it to extra compensation. The performance by the Contractor of Work affected by the conflict, variance, discrepancy, error, or omission without giving notice within the time above specified or after such notice and before the resolution of the question shall be deemed an acknowledgment by the Contractor that no extra cost is involved, and that if inappropriate, the Work so performed will be removed and replaced with proper Work, and shall constitute an absolute waiver of any claim for extra compensation resulting therefrom.

3.3.2 If the County determines that a variance, conflict, error, discrepancy or omission exists, the correction of which the Contractor agrees will not involve extra cost, the County shall order the necessary change or correction and the Contractor



## GENERAL CONDITIONS

shall proceed with the Work. If the Contractor does not agree that extra cost is not involved, the matter shall be submitted to the County in the manner provided for in Article 5 of the Construction Contract. The Contractor shall proceed with the changes specified by the County to correct the variance, conflict, error, discrepancy or omission without further delay and the questions of extra compensation shall be determined as provided in the Contract Documents.

- 3.3.3 Under any circumstances wherein delay in the Work during the determination of questions relating to variances, conflicts, errors, or discrepancies, or any other matter would involve, in the opinion of the Contractor, danger to life or property, or violation of applicable laws or regulations, the Contractor shall proceed with the Work and take such steps as it deems necessary to correct the condition. The Contractor shall notify the County within seventy-two (72) hours after the circumstances arose. If the Contractor believes the measures taken entitle it to extra compensation, the provisions of Article 4 of the Construction Contract shall apply.

### **ARTICLE 4 - AVAILABILITY OF LANDS; PHYSICAL CONDITION; REFERENCE POINTS**

#### 4.1 Availability of Lands.

- 4.1.1 County shall furnish, as indicated in the Contract Documents and no later than the date when needed by Contractor, access to the lands upon which the Work is to be done, right-of-way for access thereto, and such other lands which are designated for the use of Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by County, unless otherwise specified in the Contract Documents. If Contractor believes that any delay in County's furnishing these lands or easements entitles it to an extension of the contract time, it may make a claim therefore as provided in Article 4 of the Construction Contract. County will provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of material and equipment as shown in the Contract Documents.
- 4.1.2 The County will furnish to the Contractor copies of all available boundary surveys upon request.

## GENERAL CONDITIONS

### 4.2 Unforeseen Physical Conditions.

Contractor shall notify County within seventy-two (72) hours of discovery of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents. County shall promptly investigate those conditions and determine if further surveys or subsurface tests are necessary. Promptly thereafter, County shall obtain the necessary additional surveys and tests and furnish copies to Contractor. If County finds that physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by Contractor, a Modification shall be issued incorporating the necessary revisions.

### 4.3 Reference Points.

4.3.1 Unless otherwise provided in the Contract Documents, Contractor shall lay out its Work from base lines and benchmarks established by the County and shall be responsible for all measurements in connection therewith.

4.3.2 Unless otherwise provided in the Contracts Documents, the County will furnish upon request by the Contractor, all location and limit marks reasonably necessary for the execution of the Work. Bench marks will also be established by the County at pertinent points for control of elevations and for grades unless otherwise provided in the Contract Documents.

4.3.3 The Contractor shall, at its own expense, furnish all stakes, templates, patterns, platforms, equipment, and labor that may be required in setting and cutting, or laying out any part of the Work. After base lines and bench marks for the Work have been provided by the County, the Contractor shall be held responsible for the proper execution of the Work to such lines and grades and all stakes or other marks shall be preserved by the Contractor until removal is authorized. The County may require that the Work be suspended at any time when for any reason such marks cannot be properly followed.

4.3.4 The Contractor shall keep the County informed, a reasonable time in advance, of the times and places at which it intends to do Work in order that lines and grades may be furnished, that inspection may be provided and that necessary measurements for the record may be made with the minimum of inconvenience to the County or of delay to the Contractor.

4.3.5 The Contractor shall report to the County whenever any reference point is lost or destroyed, or requires relocation because of changes in grades or locations. The Contractor

## GENERAL CONDITIONS

shall replace and accurately relocate all reference points so lost, destroyed or moved.

### ARTICLE 5 – INSURANCE AND BONDS

- 5.1 General Insurance Requirements, see Exhibit “C.1”.
- 5.2 Bond Requirements. The Contractor shall furnish a Payment and Performance Bond(s) in accordance with §255.05 Florida Statutes and the Contract Documents as security for the faithful performance and payment of all its obligations under the Contract Documents. The County Payment and Performance Bond form shall be used. No other forms will be accepted without prior approval from the County. The bond(s) shall be in an amount equal to the Contract Sum.
- 6.3.1 The Payment and Performance Bond shall have as the surety thereon only such surety company or companies as are authorized to write bonds of such character and amount under the laws of the State of Florida and with a resident agent in the State of Florida. The Attorney-in-Fact or other officer who signs such bond(s) for the surety company must attach a certified copy of its Power-of-Attorney authorizing it to do so.
- 6.3.2 Qualification of Sureties. The following requirements shall be met by surety companies furnishing the Payment and Performance Bond.
- 6.2.2.1 The surety shall be rated “A” or better on the Financial Strength Rating (FSR) and Class “X” or better on the Financial Size Category by Best’s Rating Center, published by A. M. Best Company, Inc., of Ambest Road, Oldwick, NJ 08858. Financial Strength Rating of companies providing insurance for the Project shall be “**A-**” Class VIII or better.
- 6.2.2.2 The surety shall also be listed on the U.S. Department of Treasury (Dept. Circular 570) entitled “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.”
- 6.3.3 If the County, for justifiable cause (such as the filing for liquidation, appointment of receiver to manage said surety business, insolvency, filing petitions or applications for protection or liquidation under federal bankruptcy laws, or other causes adversely affecting the surety's ability to perform under its bonds), becomes dissatisfied with any surety or sureties then

## GENERAL CONDITIONS

upon the bond(s), the Contractor or subcontractor shall, within fifteen (15) days after written notice from the County to do so, substitute acceptable bond(s) in such form and sum, and signed by such other surety or sureties as may be satisfactory to the County. The premiums on the bond(s) shall be paid by the Contractor. No further payments shall be deemed due from County to Contractor nor shall be made until the new surety or sureties shall have furnished acceptable bond(s) to the County.

- 5.3 Additional Insurance and Bonds. Prior to delivery of the executed contract by County to Contractor, County may require Contractor to furnish such other bonds and such additional insurance in such form and with such sureties or insurers as County may require. If such other bonds or such other insurances are specified by written instructions given prior to opening of bids, the Contractor shall pay the premiums. If subsequent thereto, they shall be paid by the County.

## ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

- 6.1 Work Performed by Contractor.

If indicated in the Contract Documents or solicitation, Contractor shall perform the required percentage of Work stated as measured by cost (equipment and labor, but not materials) within Contractor’s own firm. Failure of the Contractor to perform the required percentage of Work constitutes a material breach of the Contract.

- 6.2 Construction Office.

County may require, on a job by job basis, that Contractor shall provide and maintain an office, complete with telephone, heat, and air conditioning, that provides adequate space for use by both Contractors employees and the County Project Representative. The location of such office shall be on the Project site or as approved by the County’s representative.

- 6.3 Supervision and Superintendence.

6.3.1 Contractor shall supervise and direct the Work efficiently and with its best skill and attention and in accordance with the Construction Contract. It shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor shall be exclusively responsible to see that the finished Work complies accurately and completely with the Contract Documents.

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6.3.2 Contractor shall maintain on the worksite at all times during Work progress a competent resident Superintendent, who shall not be replaced without written notice to County except under extraordinary circumstances. The Superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the Superintendent shall be as binding as if given to Contractor.

### 6.4 Labor, Materials, and Equipment.

6.4.1 The Contractor shall provide competent, qualified personnel to lay out its Work from base lines and bench marks established and to perform construction as required by the Contract Documents. It shall at all times maintain good discipline and order at the site.

6.4.2 Contractor shall furnish all material, equipment, transportation, labor, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work, unless otherwise provided in the Contract Documents.

6.4.3 All materials and equipment incorporated into the Project shall be new except as otherwise provided in the Contract Documents. If required by County, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

6.4.4 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

6.4.5 The Contractor shall be responsible for providing a complete and operable installation of all equipment it furnishes. Any changes or Modifications required to the Contract Documents as a result of the equipment manufacturer's requirements, and all adjustments to all other Work affected thereby, including but not limited to, added engineering costs due to redesign (to be paid to a design professional), structural, mechanical, electrical, heating, ventilation and air conditioning changes shall be borne by the Contractor at no additional cost to the County.

### 6.5 Substitute Materials or Equipment.

6.5.1 If the Contract Documents allow Contractor to furnish or use a substitute that is equal to any material or equipment specified, and if Contractor wishes to furnish or use a proposed substitute, it shall

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submit to County all pertinent information, plans, documents, data and material which may be necessary or desirable for County to evaluate whether the material or equipment is an acceptable substitute. By virtue of such submittal, Contractor thereby warrants and represents that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to the specified and be suited to the same use and be capable of performing the same function as the specified material or equipment.

- 6.5.2 In addition, Contractor shall, prior to the Pre-construction Conference, make written application to County for approval of such substitute material or equipment which shall include a certification as to the satisfaction of the requirements of above Section 6.5.1, and which shall also state whether or not its incorporation in or use in connection with the Project is subject to the payment of any license fee or royalty and shall identify all variations of the proposed substitute from that specified. At the election of County, Contractor shall also have the substitute supplier of material or equipment sign the certification required by this paragraph.
- 6.5.3 No substitute materials or equipment shall be ordered or installed without the written approval of County who will be the sole judge of equality, and County may require Contractor to furnish such other data as it considers appropriate. No materials or equipment shall be ordered or installed without first complying with above Sections 6.5.1 and 6.5.2. The approval by County of any substitute material or equipment shall not diminish the Contractor's or supplier's responsibility for the material or equipment submitted as a substitute under this article.
- 6.5.4 If subsequent to the award of the Contract for the rare occasions that it becomes necessary (because of delays in delivery, strikes, discontinuance of manufacture of items specified or the approved substitutions prior to award) to use an item of equipment or material which is of a different type than the equipment or material specified, or the approved equal thereof, the County, by Modification to the Contract, may authorize the use of such different type equipment or material. Each such different type item (and possibly changes in other parts of the Work related to the item) may be the same, more or less, in cost than the item specified. In its request for use of such different type item, the Contractor shall submit to the County in writing a complete description of the proposed item including dimensions, operational characteristics, changes (if any) that will be required to other related parts of the Work, etc. It shall also submit to the County in writing full information as to costs of the item specified, the cost of the different type item being proposed as well

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as costs (additional or credits) of changes (if any) to any related parts or the Work. Such information shall be in such form and detail as to permit the County to check, to its satisfaction, the costs involved.

### 6.6 Subcontractors.

- 6.6.1 Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment) whether initially or as a substitute against whom County may have reasonable objection. A subcontractor or other person or organization identified in writing to County by Contractor prior to the Notice of Award and not objected to in writing by County prior to the Notice of Award will be deemed acceptable to County in most circumstances. Acceptance of any subcontractor, other person or organization by County shall not constitute a waiver of any right of County or to reject defective Work or Work not in conformance with the Contract Documents. If County or after due investigation has reasonable objections to any subcontractor, other person or organization proposed by Contractor after the notice of award, Contractor shall submit an acceptable substitute. Contractor shall not be required to employ any subcontractor, other person, or organization against whom it has reasonable objection. Contractor shall not, without the consent of County, make any substitution of any subcontractor, other person or organization who has been accepted by County unless County determines that there is good cause for doing so.
- 6.6.2 Contractor shall be fully responsible for all acts and omissions of its subcontractors and of persons and organizations directly or indirectly employed by them and of persons, and organizations for whose acts any of them may be liable to the same extent that it is responsible for the acts and omissions of persons directly employed by it. Nothing in the Contract Documents shall create any contractual relationship between the County and any subcontractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of County to pay or to cause the payment of any monies due any subcontractor or other person or organization, except as may otherwise be required by law. County may furnish to any subcontractor or other person or organization to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done in accordance with the Schedule of Values.
- 6.6.3 The divisions and sections of the Specifications and the identifications of any drawings shall not control Contractor in dividing the Work among subcontractors or delineating the Work to be performed by any specific trade.

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6.6.4 Contractor shall incorporate the terms and conditions of the Contract Documents into its contracts with subcontractors and shall require subcontractors to do the same with any lower tier contractors or suppliers.

6.6.5 All Work performed for the Contractor by a subcontractor shall be pursuant to an appropriate agreement between the Contractor and the subcontractor which shall contain provisions that waive all claims and rights the contracting parties may have against one another for damages caused by fire or other perils provided in accordance with these general conditions to the extent payment is actually made under insurance, except such rights as they may have to the proceeds of such insurance held by the County. The Contractor shall pay each subcontractor a just share of any insurance money received by the Contractor.

### 6.7 Patent Fees and Royalties.

Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of County its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by County in the Contract Documents.

### 6.8 Permits.

6.8.1 Contractor shall obtain and pay for all required permits and license, except as otherwise noted, and shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which were applicable at the time of its Bid.

6.8.2 Contractor shall obtain and pay for any bonds and insurances that may be required by the various permits.

### 6.9 Laws and Regulations.

The Contractor shall be responsible to know, apply and comply with all applicable federal and state laws, all local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the Work. If Contractor observes that the Contract Documents are at variance therewith, it shall give County written notice thereof, within seventy-two (72) hours of its observation, and any necessary changes shall be adjusted by an



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appropriate Modification. If Contractor performs any Work it knows or should know is contrary to such laws, ordinances, rules and regulations, and without such notice to County, it shall bear all costs related to bringing the Work into compliance.

### 6.10 Taxes.

Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by it in compliance with the law of the place where the Work is to be performed, unless otherwise stipulated elsewhere in the Contact Documents.

### 6.11 Use of Premises.

6.11.1 Contractor shall confine its equipment, the storage of materials and equipment and the operations of its workers to areas permitted by law, ordinances, permits or the requirement of the Contract Documents, and shall not unreasonably encumber the premises with materials or equipment.

6.11.2 Contractor shall not place or maintain, or allow to be placed or maintained, any advertising matter, sign, bill, poster, etc., on or about the site, except those required by law or by the Contract Documents, unless approved by the County, in writing.

6.11.3 Contractor shall not load nor permit any part of any structure to be loaded with weights that will endanger the structure, nor shall it subject any part of the Work to stresses or pressures that will endanger it.

### 6.12 Record Plans.

Throughout the Project, Contractor shall maintain records of all deviations from the Contract Plans and Specifications and shall prepare record drawings showing correctly and accurately all changes and deviations from the Work made during construction to reflect the Project as it was actually constructed. These drawings shall conform to recognized standards of drafting, shall be neat and legible. Contractor shall be liable to County for the cost to develop record drawings upon Contractor's failure or refusal to provide same in a timely manner.

Contractor shall keep one copy of the record of all drawings, specifications, addenda, modifications, and shop drawings at the site in good order and annotated to show all changes made during the construction process. These documents shall be available to County at all times.

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### 6.13 Safety and Protection.

The Contractor will be solely responsible for initiating formulating, supervising, reviewing, and overseeing any and all safety precautions, practices, procedures, and programs which are or should be provided in connection with the Work. Contractor will take all necessary or proper precautions for the safety of and will provide the necessary protection to prevent damage, injury, or loss to:

6.13.1 All employees on the work site and any other person who may be affected thereby whether or not such person is involved with the Work.

6.13.2 All the Work and all materials or equipment to be incorporated therein whether in storage on or off the site.

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

### 6.14 Emergencies.

In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from County is obligated to act at its discretion to prevent threatened damage, injury or loss. It shall give County written notice within seventy-two (72) hours of any significant changes in the Work or deviations from the Contract Documents caused thereby. If Contractor believes that additional work done by it in an emergency which arose from causes beyond its control entitles it to an increase in the Contract Sum or an extension of the Contract Time, it may make a claim therefore as provided in Article 4 of the Construction Contract.

### 6.15 Cleaning.

Contractor shall, in accordance with the Contract Documents, keep the Project site free from accumulations of waste materials, rubbish and other debris resulting from the Work, and at the completion of the Work it shall remove all waste materials, rubbish and debris from and about the Project as well as all tools, construction equipment and machinery, and surplus materials and shall leave the site clean and ready for occupancy and use by County. Contractor shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents.

### 6.16 Indemnification - See Article 9.3 of the Construction Contract.

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### **6.17 Trench Excavation Safety System and Shoring, Special (Trench Excavation).**

The Contractor shall certify that all trench excavation done within its control in excess of five feet in depth complies with OSHA trench safety standards and special shoring requirements contained in 29 C.F.R., S. 1926.650, subpart P, including all subsequent revisions or updates to these standards as adopted by the Department of Labor and Employment Security (DLES). Inspections required by OSHA trench excavation safety standards shall be provided by the Contractor unless provided otherwise in the Contract Documents.

The Contractor also agrees that it has obtained identical certification from its subcontractors that performed trench excavation, and that it will retain such certifications in its files for a period of not less than three years following final acceptance.

The Contractor shall consider all available geotechnical information in its design of the trench excavation safety system.

### **6.18 Immigration Reform and Control Act of 1986.**

The Contractor agrees that it does not and will not, during the performance of the Contract, employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.

If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract. The Contractor shall be responsible for including this provision in all contracts with subcontractors related to this Contract.

## **ARTICLE 7 – WORK BY OTHERS**

### **7.1 Work by the County.**

County may perform additional work related to the Project by itself, or it may let other direct Contracts therefore. Contractor shall afford the other Contractors who are parties to such direct contracts (or County, if it is performing the additional work itself) reasonable opportunity for the introduction and storage of materials and equipment for the execution of Work, and shall properly connect and coordinate its Work with theirs.

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### **7.2 Contractor's Responsibility.**

7.2.1 If any part of Contractor's Work depends for proper execution or results upon the work of any such other contractor or County, Contractor shall, prior to commencing the Work, inspect and promptly report to County in writing any defects or deficiencies in such Work that render it unsuitable for such proper execution and results. Its failure to so report shall constitute an acceptance of the other work as fit and proper for the relationship to its Work.

7.2.2 Contractor shall do all cutting, fitting and patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering others work and will only cut or alter others work with the written consent of County and of the other contractors whose work will be affected.

### **7.3 Work by Others Not Noted.**

If any performance of additional work by other contractors or County is not noted in the Contract Documents prior to the execution of the Contract, written notice thereof shall be given to Contractor prior to starting any such additional Work. If Contractor believes that the performance of such additional Work by County or others involves it in additional expense or entitles it to an extension of the contract time, it may make a claim therefore as provided in Articles 4 of the Construction Contract.

## **ARTICLE 8 – COUNTY'S RIGHTS AND RESPONSIBILITIES**

### **8.1 General.**

8.1.1 County shall issue most communications related to administration of the Project to Contractor through the CEI or A/E consultant selected and compensated by the County, if such a person has been contracted on the Project.

8.1.2 County shall promptly furnish data required under the Contract Documents and make prompt payments to the Contractor in accordance with Contract Documents and applicable law.

8.1.3 County's duties in respect to providing lands and easements and possibly engineering surveys to establish reference points, unless otherwise stipulated elsewhere, are set in the Contract Documents.

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### ARTICLE 9 – CEI’S (A/E’S) STATUS DURING CONSTRUCTION

#### 9.1 County’s Representative.

Construction project administration, inspection, and acceptance of materials and workmanship shall be the responsibility of the County. Unless otherwise provided elsewhere in the Contract Documents, the CEI or A/E shall be the County’s designated representative during the construction period. Accordingly, the terms “engineer,” “inspector” and other references to the person or persons granting approval, authority, or permission, conducting inspections or tests, observing the Work and so forth, may refer to the CEI or A/E. The duties and responsibilities and the limitations of authority of CEI / A/E as County’s representative during construction will be set forth in more detail at the Pre-Construction Conference. Should the County appoint as its representative a party other than the CEI or A/E, County shall give Contractor prompt notice.

#### 9.2 Visits to Site.

The CEI or A/E shall maintain an office at the site for the exclusive purpose of observing the progress of the Work in order to evaluate, in general, whether the Contractor is achieving the applicable performance parameters as generally embodied in the Project’s design and communicated via the Contract Documents. The CEI or A/E shall not be responsible either directly or indirectly for the Contractor’s initiation, formulation, supervision or overseeing of construction means, methods, techniques, sequences or procedures, or safety precautions, practices, procedures or program employed in connection therewith. These matters shall be within the exclusive discretion, control, and responsibility of the Contractor (s). CEI or A/E shall not in any way be responsible for the failure of Contractor (s) to perform the construction Work in accordance with the Contract Documents. The CEI or A/E shall keep the County informed (i.e. written reports of the progress and quality of Work) and regarding the progress and quality of the Work performed by Contractor including but not limited to responsibility for assisting the County in responding to RFI’s, review and certification of Applications for Progress Payment, Application for Final Payment, periodic inspections including a Substantial Completion inspection and Final Completion inspection, as well as review and approval of the Contractor’s punchlist.

#### 9.3 Clarifications and Interpretations.

CEI or A/E will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of drawings or otherwise) as may be necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If Contractor believes that a written clarification and interpretation entitles it to an increase in the Contract Sum, the Contractor

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may make a claim therefore as provided in Article 4 of the Construction Contract. No oral clarification or interpretation shall be valid.

### 9.4 Rejecting Defective Work.

9.4.1 CEI or A/E will have authority to disapprove or reject Work which is “defective” (which term is hereinafter used to describe Work that is unsatisfactory, faulty, or defective, or does not meet the requirements of any inspection, test, or approval process utilized by the CEI or A/E, or has been damaged prior to approval of Final Payment or otherwise fails to comply with the Contract Documents). CEI or A/E will also have authority to require special inspection or testing of the Work as provided in Article 13, paragraph 13.4.2 herein, whether or not the Work is fabricated, installed, or completed.

9.4.2 Such authority to disapprove or reject or to require special inspection or testing shall not be construed as giving the CEI or A/E, either directly or indirectly, any power, control or authority over the Contractor’s construction means, methods, techniques, sequences or procedures (or safety precautions, practices, procedures or programs employed in connection therewith) and shall not be construed as giving the CEI or A/E the power, control or authority to stop the Work, but CEI or A/E shall recommend to County to order stopping the Work if it is in the County’s best interest.

### 9.5 Shop Drawings, Change Orders and Payments.

9.5.1 In connection with CEI’s or A/E’s responsibility for shop drawing and samples, see the appropriate section of the Contract Documents related to Shop Drawings and submittals.

9.5.2 CEI or A/E may have responsibility for assisting the County with drafting and approval of Modifications at the County Engineer’s discretion.

9.5.3 In connection with CEI’s responsibilities with respect to assisting the County with processing Applications for Progress Payments, etc., see Article 14 herein.

### 9.6 Resident Project Representatives.

If the County and CEI, or A/E agree, the CEI or A/E will furnish a Resident Project Representative and assistants to assist the CEI or A/E in carrying out its responsibilities at the site. If the CEI or A/E is not authorized by the County to provide a Resident Project Representative, the County will provide a County representative authorized to perform such duties.

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### **9.7 Decisions on Disagreements.**

9.7.1 The CEI or A/E may, at County's direction, be the initial interpreter of the requirements of the Contract Documents and the judge of the Contractor's performance thereunder. In its capacity as interpreter and judge, it will exercise its best efforts to insure faithful performance of the Work by Contractor.

Claims, disputes and other matters relating to the execution and progress of the Work, or the interpretation of or performance under the Contract Documents shall be referred to the CEI or A/E for decision, which it will render in writing within a reasonable time.

9.7.2 Should Contractor object to any decision by the CEI or A/E with respect to any such claim, dispute or other matter that has been referred to the CEI or A/E, except any which have been waived by the making or acceptance of final payment as provided in Article 14, paragraph 14.11, such objection shall be resolved in accordance with Article 16.

## **ARTICLE 10 – CHANGES IN THE WORK**

### **10.1 Additions, Deletions, or Revisions by County.**

The County, without invalidating the Contract, may order extra Work or make changes by altering, adding to, or deducting from the Work. Modifications to the Contract shall be made in accordance with the Contract Documents. Adjustments to the Contract Sum may require final approval in accordance with County purchasing procedures which may require County Manager or County Council approval. Contractor shall not delay the progress of the Work on account of waiting for County Council approval if the County Engineer has recommended approval by County Council of a change to the Contract Sum in an amount agreeable to the Contractor.

### **10.2 Minor Changes by Engineer.**

In giving instructions, the County shall have authority to make minor changes in the Work not involving extra cost or time and not inconsistent with the purposes of the Contract. If Contractor believes that any minor change or alteration authorized by County entitles it to an increase in the Contract Sum, it may make a claim therefore as provided in Article 4 of the Construction Contract or Specifications.

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### 10.3 Unauthorized Work by Contractor.

Additional Work performed by Contractor without written authorization from the County is at the Contractor's own risk. Contractor shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time without an executed Modification.

### 10.4 Modifications.

10.4.1 County and Contractor shall execute Modifications in accordance with the Contract Documents.

10.4.2 It is the Contractor's responsibility to notify its surety of any changes affecting the Scope of the Work or change in the Contract Sum, and the amount of the applicable bonds shall be adjusted accordingly. Contractor shall furnish proof of such adjustment to County upon request.

10.4.3 Upon delivery by the County of a fully executed Modification, the Modification shall be deemed a part of this Contract in all respects and the Contractor shall proceed accordingly upon delivery of a fully executed copy thereof.

10.4.4 The Contractor shall not proceed with any part of the Work affected by said Modification until signed by the County. If, however, the delay for said time would cause, in the opinion of the Contractor, a material increase in the cost to the Contractor for completing the Work or would affect the ability to complete the Project within the Contract Time, the Contractor may proceed at its own risk. The failure of the Contractor to proceed during said time shall be deemed its acknowledgment that the delay will not cause any such expense or delay to Contractor.

10.4.5 It is the specific intent of the parties that the Work required is to be performed at the firm prices stated and that no extras or changes in the Work, either additions or deletions involving a change in the Contract Sum, shall be undertaken or performed by the Contractor, except as expressly provided by the Contract Documents.

## **ARTICLE 11 – CHANGE OF CONTRACT SUM**

### 11.1 General.

11.1.1 The Contract Sum constitutes the total compensation payable to Contractor for performing the Work.



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11.1.2 The Contract Sum may only be changed by a duly executed written Modification in accordance with the Contract Documents.

11.1.3 Value of Work Covered by Change Order:

11.1.3.1 The cost of the Work of any such extra, deleted, or changed Work shall be determined in one or more of the following ways:

11.1.3.1.1 By estimate and acceptance in a Lump Sum properly itemized and supported by sufficient substantiating data to permit evaluation; the substantiating itemized data shall include the following:

- i. Labor rates and hours,
- ii. Itemized material list and price,
- iii. Construction Equipment hours and rates,
- iv. Subcontractors costs itemized as above, and
- v. Any other information that will aid the County and/or CEI or A/E in evaluating the cost and thereby expediting the approval of the Change Order.

11.1.3.1.2 By unit prices named in the Contract or subsequently agreed upon; and

11.1.3.1.3 By cost and percentage or by cost and a fixed fee.

11.1.3.2 If the County, on its own initiative, or upon recommendation of the CEI or A/E, wants any extra Work or change in the Work constituting an alteration, addition to, or deduction from, the work, the CEI or A/E shall prepare a Change Order setting forth the kind, character and quantity of such Work and the CEI or A/E's estimate of the value thereof determined as hereafter provided.

11.1.3.3 In preparing such estimate of value, the CEI or A/E shall consult with the Contractor and ascertain the Contractor's acceptance of said valuation and willingness to perform the additional Work or eliminate the deletions for said sum, which shall be

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evidenced on said Change Order by the signature of the Contractor or its duly authorized representative. The CEI or A/E shall submit said Change Order to the County and notify the Contractor of the date of said submission.

### 11.1.4 Cost of the Work.

11.1.4.1 For purposes of Change Orders, the term "Cost of the Work" means the sum of all costs necessarily incurred and paid by the Contractor in the proper performance of the work directly required by the Change Order. Except as otherwise may be agreed to in writing by County, such costs shall be in amounts no higher than those prevailing in the locality of the project and shall include only the following items and shall not include any of the costs itemized in Section 11.1.4.7 below.

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

11.1.4.3 Cost of all Materials and Equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless County deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to County. All trade discounts, rebates, and refunds, and all

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returns from sale of surplus Materials and Equipment shall accrue to County, and Contractor shall make provisions so that they may be obtained.

- 11.1.4.4 If required by County, Contractor shall obtain competitive bids from Subcontractors acceptable to it and shall deliver such bids to County who will then determine with the advice of CEI or A/E, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of cost of the work plus a fee, the cost of the work shall be determined in accordance with Section 11.1.5.1.2.2. All subcontracts shall be subject to the other provisions of the Contract documents insofar as applicable.
- 11.1.4.5 Costs of special consultants (including, but not limited to, engineers, architects, testing laboratories and surveyors) employed for services specifically related to the Work required by the Change Order.
- 11.1.4.6 Supplemental costs including the following:
  - 11.1.4.6.1 The proportion of necessary transportation, traveling, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work required by the Change Order.
  - 11.1.4.6.2 Cost of all appliances, office, and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of Contractor.
  - 11.1.4.6.3 The cost of utilities, fuel, and sanitary facilities at the site.
  - 11.1.4.6.4 Cost of premiums for bonds and insurance directly arising from the Work associated with the Change Order which Contractor is required to pay in accordance with the Contract Documents.

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11.1.4.7 The term cost of the work shall not include any of the following:

- 11.1.4.7.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracts agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor whether at the site or in its principle or branch office for general administration of the work and not specifically included in the schedule referred to in subparagraph D, parts 1 and 2 above, all of which are to be considered administrative costs covered by the Contractor's fee.
- 11.1.4.7.2 Expenses of Contractor's principle and branch offices other than its office at the site.
- 11.1.4.7.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 11.1.4.7.4 Cost of premiums for all Bonds and for all insurance policies whether or not Contractor is required by the Contract documents to purchase and maintain the same (except as otherwise provided above).
- 11.1.4.7.5 Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective work, disposal of Materials or Equipment wrongly supplied and making good any damage to property.

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11.1.4.7.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in above.

### 11.1.5 Contractor's Fee.

11.1.5.1 The Contractor's fee which shall be allowed to Contractor for its overhead and profit shall be determined as follows:

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

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

11.1.5.1.2.1 For costs incurred for work performed directly by Contractor, Contractor's fee shall be ten (10%) percent;

11.1.5.1.2.2 For costs incurred for work performed by Subcontractor, Contractor's fee shall be five (5%) percent. If a Subcontract is on the basis of cost of the Work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be ten (10%) percent, and;

11.1.5.1.2.3 No fee shall be payable on the basis of cost itemized under paragraphs D6 or D7 above.

11.1.5.1.3 The amount of credit to be allowed by Contractor to County for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both

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additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.

11.1.6 Allowances. It is understood that Contractor has included in the Contract price all allowances so named in the Contract documents and shall cause the Work so covered to be done by such Material suppliers or Subcontracts and for such sums within the limit of the allowances as CEI or A/E or County Representative may approve. Upon final payment, the Contract price shall be adjusted as required and an appropriate Change Order issued. The Contractor agrees that the original Contract price includes such sums as it deems proper for costs and profit on account of cash allowances. No demand for additional cost or profit in connection therewith shall be allowed.

11.1.7 Unusual Costs. The Contractor may petition the County at any time for an additional rate adjustment on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year. If the Contractor petitions for such an increase, the Contractor shall also petition for a rate reduction on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year; failure to make such petition may be grounds for Contract termination.

The Contractor's request shall contain substantial proof and justification to support the need for the rate adjustment. The County may request from the Contractor, and the Contractor shall provide, such further information as may be reasonably necessary in making its determination. The County shall approve or deny the request, in whole or in part, within sixty (60) Days of receipt of the request and all other additional information required by the County. Any price redetermination shall be solely based upon the documentation provided and the County reserves the right to rescind any price relief granted should the circumstances change and prices go down.

## ARTICLE 12 – CHANGE OF THE CONTRACT TIME

### 12.1 General.

The Contract Time may only be changed by a duly executed written Modification in accordance with the Contract Documents. Any claim by

## GENERAL CONDITIONS

Contractor for extra Contract Time shall be in accordance with Article 4 of the Construction Contract.

### 12.2 Delay in Performance of Contract.

12.2.1 The Contractor shall diligently and timely prosecute the Work under the Contract. The Work shall be “complete” only after certification of Final Completion by the County.

12.2.2 If the Contractor’s progress in completing the Work is delayed for any reasons beyond the Contractor’s control (including, but not limited to acts, errors, omissions or conduct of the County or CEI or A/E) Contractor’s exclusive remedy shall be to request an extension of the time allowed for completion of the Work under this Contract. Under no circumstances, shall Contractor be entitled to claim or recover monetary damages resulting from any such delay, except as specifically allowed by the Contract Documents.

12.2.3 The Contractor shall notify the County in writing of such delay and the cause thereof, in accordance with the Construction Contract and Specifications. The CEI or A/E shall then ascertain the facts and the extent of the delay, inform the County, and determine if County agrees to provide an extension of the Contract Time in an amount equal to time lost due to delays beyond the control of the Contractor. If the Contractor objects to any adjustment made by the County under this clause, such dispute shall be determined in accordance with Article 14 of these General Conditions.

12.2.4 No such extension of time shall be deemed a waiver by the County of its right to terminate the Contract for abandonment or delay by the Contractor as provided in the Contract, nor shall such extension be deemed to relieve the Contractor from full responsibility for performance of its obligations hereunder.

12.2.5 Force Majeure. Neither party shall be liable for any failure or delay in the performance of its obligations under the Contract to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Contract, acts of God, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and

## GENERAL CONDITIONS

such cause being referred to as a “Force Majeure Event”). Accordingly, the parties further agree that:

12.2.5.1 Upon the occurrence of Force Majeure Event, the non-performing party shall be excused from any further performance of those obligations under this Contract that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

12.2.5.2 Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party’s performance of its obligations and duties pursuant to this Contract. Such notice shall be delivered or otherwise communicated to the other party within two (2) business Days following the failure or delay caused by the Force Majeure Event or as soon as possible after such failure or delay if the Force Majeure Event precludes the non-performing party from providing notice within such time period.

12.2.5.3 In the event of a Force Majeure Event, the time for performance by the parties under the applicable statement of Work shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of the Contract.

### 12.3 Liquidated Damages for Delay.

All time periods stated in the Contract Documents are of the essence of the Contract. The County and Contractor agree that any damages and losses to the County which will result from the Contractor’s failure to complete the Work within the time specified (including any extensions thereof approved by the County) are impossible to accurately determine at the time of executing this Contract. Such sums as detailed in Article 2.3 of the Construction Contract are hereby agreed to be reasonable predictions of damages, which will be sustained and are specifically declared to not constitute a penalty for breach of contract.



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### ARTICLE 13 – WARRANTY AND GUARANTEE; TESTING AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

#### 13.1 Warranty and Guarantee.

Contractor warrants and guarantees to County that all materials and equipment shall be new unless otherwise specified and of good quality and free from faults or defects and in accordance with the requirements of the Contract Documents and of any inspections, tests or approvals referred to in Section 13.2. All unsatisfactory Work, all faulty or defective Work, and all Work not conforming to the requirements of the Contract Documents at the time of acceptance thereof or of such inspections, tests or approvals shall be considered defective. All defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article 13.

#### 13.2 Test and Inspections.

13.2.1 If either the Contract Documents or laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project requires any Work to be inspected, tested, or approved, the Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish County the required certificates or inspection, testing or approval.

13.2.2 Contractor shall give County timely notice of readiness of the Work for all inspections, tests or approvals. If any such Work required to be inspected, tested or approved is covered without written approval of County, it must, if requested by County, be uncovered for observation, and such uncovering shall be at Contractor's expense unless Contractor has given County timely notice of its intention to cover such Work and County has not acted with reasonable promptness in response to such notice.

13.2.3 Observation, inspections, tests or approvals by County or persons other than Contractor shall not relieve Contractor from its obligations to perform the Work in accordance with the requirements of the Contract Documents.

#### 13.3 Access to Work.

CEI or A/E and its representatives and other representatives of County shall have unlimited access to the Work. Contractor shall provide proper and safe facilities for such access and observation of Work and also for any inspections or testing thereof by others.

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### 13.4 Uncovering Work.

13.4.1 If any part of the Work is covered contrary to the instruction of CEI or A/E or County, it must, if directed by CEI or A/E or County, be uncovered for its observation and replaced at Contractor's expense.

13.4.2 If any Work has been covered which CEI or A/E or County has not requested to observe prior to this being covered, or if CEI considers it necessary or advisable that covered Work be inspected or tested, Contractor, at CEI's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as CEI or A/E, or County may require that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction, including compensation for additional services, and an appropriate Modification shall be issued. If, however, such Work is found to be in accordance with the Contract Documents, Contractor shall be entitled to request an increase in the Contract Sum or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if it makes a claim therefore as provided in the Contract Documents.

### 13.5 County May Stop the Work.

If the Work in any respect fails to comply with the Contract Documents, or is causing unsafe conditions, in the opinion of the County, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or if Contractor fails to make prompt payments to subcontractors or for labor, materials or equipment, County may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of County to stop the Work shall not give rise to any duty on the part of County to exercise this right for the benefit of Contractor or any other party.

### 13.6 Correction or Removal of Defective Work.

If required by County prior to approval of Final Payment, the Contractor shall promptly, without cost to County and as specified by County, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by County, remove it from the site and replace it with non-defective Work. If Contractor does not correct such defective Work or remove and replace such rejected Work within a reasonable time, all as specified in a written notice from County,

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County may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services, shall be paid by Contractor, and an appropriate Modification shall be issued. Contractor shall also bear the expenses of making good all work of others destroyed or damaged by its correction, removal, or replacement of its defective Work.

### 13.7 One-Year Warranty.

If, after the approval of Final Payment and prior to the expiration of one year after the date of Substantial Completion, or such longer period of time as may be prescribed by law or by the terms of any applicable special warranty or guarantee required by the Contract Documents, any Work fails to perform its intended purpose, Contractor shall promptly, without cost to County and in accordance with County's written instructions, either correct such defect, or, if it has been rejected by County, remove it from the site and replace it. If Contractor does not promptly comply with the terms of such instructions, County may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services shall be paid by Contractor. Notwithstanding the above, this provision shall not modify, restrict or impair the County's rights against the Contractor either during or subsequent to the expiration of said period, it being understood that said period establishes an additional remedy to the County in the event any portion of the Work fails after Final Payment. This contractual warranty period shall have no limiting effect on the County's right to make a claim against Contractor for the discovery of any latent defect(s) in the Work discovered before or after the expiration of the warranty period.

### 13.8 Acceptance of Defective Work.

If, instead of requiring correction or removal and replacement of failed or defective Work, County prefers to accept it, it may do so. In such case, if acceptance occurs prior to approval of Final Payment, a Modification shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Sum; or, if the acceptance occurs after approval of Final Payment, an appropriate amount, acceptable to County, shall be paid by Contractor to County.

### 13.9 Neglected Work by Contractor.

If Contractor should fail to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, County, after ten (10) days written notice to Contractor may, without prejudice to any other remedy it may have, make good such deficiencies and the cost thereof (including compensation for additional

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professional services) shall be charged against Contractor in which case a Modification shall be issued incorporating the necessary revisions in the Contract Documents including appropriate reduction in the Contract Sum. If the payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to County.

### ARTICLE 14 – PAYMENTS AND COMPLETION

#### 14.1 Schedules.

At least ten (10) days prior to submitting the first Application for Progress Payment, Contractor shall submit a firm progress schedule, a final schedule of shop drawings submission and a detailed estimate of the Work (Schedule of Values). These schedules shall be satisfactory in form and substance to the CEI or A/E and County. The detailed estimate (Schedule of Values) shall include quantities and unit prices aggregating the Contract Sum and shall subdivide the Work into component parts in sufficient detail to serve as the bases for Progress Payments during construction. Upon approval of such estimate by CEI or A/E and County, it shall be incorporated into the form of Application for Payment furnished by CEI or A/E or County.

#### 14.2 Application for Progress Payment.

14.2.1 Before each Progress Payment request is made, Contractor shall submit to County, CEI or A/E for review an Application for Progress Payment completed and signed by Contractor covering the Work completed as of the date of the application and accompanied by such data and schedules as CEI or A/E or County may require. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Progress Payment shall also be accompanied by such data satisfactory to County as will establish County's title to the material and equipment and protect its interest therein, including applicable insurance.

14.2.2 Each Application for Progress Payment shall include:

14.2.2.1 An affidavit of Contractor stating that all record drawings or installation information is up to date;

14.2.2.2 An affidavit of Contractor stating that all previous Progress Payments received on account of the Work included in prior Applications for Progress Payment have been applied to discharge all of Contractor's obligations to subcontractors, materialmen, laborers, and suppliers and there are

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no known claims of non-payment by lower tier participants in the Project.

### 14.2.2.3 Contractor's Release.

14.2.3 Failure to provide any of the items above shall be sufficient reason to withhold payment of the current Application for Progress Payment until delivered to the CEI or A/E or County.

### 14.3 Contractor's Warranty of Title.

Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Progress Payment, whether incorporated in the Project or not, will pass to County at the time of incorporation into the Work or payment by the County, whichever is first, free and clear of all liens, claims, security interest and encumbrances.

### 14.4 Approval of Payments.

14.4.1 CEI or A/E will, within ten (10) days after receipt of each Application for Progress Payment, either indicate in writing recommendation for its approval of payment and present the application to County, or return the application to Contractor indicating in writing its reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the application. County shall, make necessary arrangements to promptly pay Contractor the amount recommended by the CEI or A/E or return such applications to the CEI or A/E stating objections in writing.

14.4.2 CEI or A/E's recommendation for approval of any payment requested in an Application for Progress Payment will constitute a representation by it to County, based on CEI or A/E's on-site observations of the Work in progress and on its review of the Application for Progress Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of its knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning project upon completion; the minor deviations from the Contract Documents correctable prior to completion; the results of any subsequent tests called for in the Contract Documents; and any qualifications stated in its recommendation); and that Contractor is entitled to payment of the amount approved. However, by recommending any such payment CEI or A/E will not thereby be deemed to have represented that it made exhaustive or continuous on-site inspections to check the quality or the quantity of the Work, or

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that it has reviewed the means, methods, techniques, sequences, and procedures of construction, or that it has made any examination to ascertain how or for what purpose Contractor has used the monies paid or to be paid to it on account of the Contract Sum, or that title to any Work, materials or equipment has passed to County free and clear of any claims by third parties.

14.4.3 CEI or A/E's recommendation for final payment shall constitute a representation by it to County that the conditions precedent to Contractor being entitled to final payment as set forth in Section 14.10.1, have been fulfilled.

14.4.4 CEI or A/E may refuse to recommend the whole or any part of any payment if, in its opinion, it would be incorrect to make such recommendation to County. It may also, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously approved, to such extent as may be necessary in its opinion to protect County, including, but not limited to, loss or damage arising from the fact that:

14.4.4.1 The Work is defective, or completed Work has been damaged requiring correction or replacement,

14.4.4.2 Claims or notices of non-payment have been made or delivered, or there is reasonable cause to believe such may be made or delivered,

14.4.4.3 The Contract Sum has been or should be reduced because of Modifications,

14.4.4.4 County has been required to correct defective Work or complete the Work in accordance with Section 13.9, or;

14.4.4.5 Unsatisfactory prosecution of the Work, including failure to furnish acceptable submittals or to clean up.

### 14.5 Substantial Completion.

14.5.1 The process for determining Substantial Completion is described in Section 4.2.11 through 4.2.17 of the Construction Contract.

14.5.2 County shall have the right to exclude Contractor from the Project (or a specified part thereof) after the date of Substantial

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Completion, but County shall allow Contractor reasonable access to complete or correct items on the list of incomplete items / punch list.

### 14.6 Partial Utilization.

Prior to Final Payment, County may notify Contractor in writing of its desire to use a specified part of the Project which it believes it may use without significant interference with construction of the other parts of the Project. If Contractor agrees, it will certify to County that said part of the Project is Substantially Complete and request County to issue a notice of Substantial Completion for that part of the Project. Within a reasonable time thereafter County, Contractor and CEI or A/E shall make an inspection of that part of the Project to determine its status of completion.

If CEI or A/E does not consider that it is Substantially Complete, it will notify the County and Contractor in writing giving its reasons therefore. If CEI or A/E, County, and Contractor consider that part of the Project to be Substantially Complete, the CEI or A/E will execute and deliver to County and Contractor a notice of that effect, establishing the date of Substantial Completion as to that part of the Project, attaching County shall have the right to exclude Contractor from any part of the Project which CEI or A/E has so certified to be Substantially Complete, but County shall allow Contractor reasonable access to complete or correct items on the list of incomplete items / punch list.

### 14.7 Final Inspection.

Upon written notice from Contractor that the Project is complete, CEI or A/E will make a final inspection with County and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

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### 14.8 Final Application for Payment.

After Contractor has completed all Work to the satisfaction of County and delivered all maintenance and operating instructions, schedules, record drawings, guarantees, Consent of Surety, certificates of inspection, and other documents, all as specified in Section 14.9, and as required by the Contract Documents, it may make Application for Final Payment following the procedure in the Contract Documents. The Application for Final Payment shall be accompanied by such data and schedules as County may reasonably require, together with complete and legally effective releases or waivers (satisfactory to County) of all claims arising out of the Contract Documents and the labor and services performed and the material and equipment furnished thereunder, except that, no release or waiver shall be required by any claimant upon receipt by County of a valid Consent of Surety to Final Payment if the requirement of additional releases or waivers would violate 255.05 Florida Statutes.

### 14.9 Items to be Furnished at Final Completion.

#### 14.9.1 Guarantees, Warranties, and Other Documents:

14.9.1.1 Assemble one copy of all of the following (if applicable): guarantees, warranties, bonds, releases of bonds, affidavits and certificates required by the Contract Documents for various materials, systems, and equipment including copies of all permits and certificates of inspection obtained by any subcontractors or others.

14.9.1.2 Place documents in order, list each document on a transmittal letter or form, and deliver to the County.

#### 14.9.2 Extra Stock and Parts:

14.9.2.1 Turn over to County at a location designated by County the spare stock of materials, spare parts, and loose accessories for equipment required by the Specifications, if any.

#### 14.9.3 Record Drawings:

The Contractor should have, during the progress of the Work, kept a careful record of all the changes to the Contract Plans. Contractor shall deliver to the County the set of records containing all revisions and changes as approved and built.



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### 14.9.4 Record and Information Manual (Warranty manuals as applicable):

14.9.4.1 Prior to final inspection, submit to the County, three (3) copies of a record and information manual.

14.9.4.1.1 Covers: Bind in plastic-covered, loose-leaf binders each bearing a label with the title and date of the Project.

14.9.4.1.2 Sheets: 8½" x 11" except pull-out sheets may be neatly folded to 8½" x 11."

### 14.9.4.2 Include in manual, the following:

14.9.4.2.1 Table of contents, listing all items;

14.9.4.2.2 List of all subcontractors, sub-subcontractors and suppliers / manufacturers providing materials and equipment fabricated to a special design. State each of the company's, name, address and telephone number;

14.9.4.2.3 Manufacturer's name, type, color and pattern designation as applicable for architectural pre-cast concrete, face brick, concrete masonry units, metal wall panels, storefront work, windows, doors and frames, limestone, doors, finish hardware, ceramic tile, quarry tile, brick pavers, resilient floors, access flooring, carpet, paint, acoustical ceilings and other finish materials as applicable;

14.9.4.2.4 Catalog data for each piece of equipment with serial numbers, data for available accessories maintenance and operating instruction, wiring diagrams and spare parts list, where applicable;

14.9.4.2.5 Name, address, and telephone number of local representative for principal items or equipment;

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14.9.4.2.6 Additional information for record manual required in various sections of the Specifications; and

14.9.4.2.7 Additional information for record manual required in various sections of the Specifications.

### 14.9.5 Warranty:

14.9.5.1 Obtain, in County's name, the standard written manufacturer's warranty of products furnished under each section of the Specifications, when such warranty is offered in the manufacturer's published product data.

14.9.5.2 All product warranties shall be in addition to and not in lieu of other responsibilities which the Contractor may have.

All product and equipment warranties and guarantees shall be turned over to the County at the time Final Payment is requested.

### 14.10 Approval of Final Payment.

14.10.1 If, on the basis of their observation and review of the Work during construction, their final inspection, and review of the Application for Final Payment, and as required by the Contract Documents, CEI or A/E and County are satisfied that the Work has been completed and Contractor has fulfilled all of its obligations under the Contract Documents, CEI or A/E will, within twenty (20) days after receipt of the Application for Final Payment, indicate recommendation for payment and present the Application for Final Payment to County for payment. Thereupon, CEI or A/E will give written notice to County and Contractor that the Work is acceptable subject to the provision of Section 14.11. Otherwise, it will return the application to Contractor, indicating in writing its reasons for refusing to approve Final Payment, in which case Contractor shall make the necessary corrections and resubmit the application. County shall, within ten (10) days of presentation to it of an approved Application for Final Payment, make arrangements to promptly pay Contractor the amount recommended by CEI or A/E.

14.10.2 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of Contractor, and CEI or A/E so confirms, County may, without terminating the Contract, make payment of the balance due for that portion of

## **GENERAL CONDITIONS**

the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract, and if bonds have been furnished as required, the written Consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the CEI or A/E prior to recommendation for such payment. Such payment shall be made under the terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims.

### **14.11 Contractor's Continuing Obligation.**

Contractor's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by CEI, nor the issuance of a notice of Substantial Completion, nor any payment by County to Contractor under the Contract Documents, nor any use or occupancy of the Project or any part thereof by County, nor any act of acceptance by County, nor any failure to do so, nor any correction of defective Work by County, nor the expiration of the one year warranty period, provided in Section 13.7 hereof shall constitute an acceptance of Work not in accordance with the Contract Documents.

### **14.12 Waiver of Claims.**

The making and acceptance of Final Payment shall constitute:

- 14.12.1 A waiver of all claims by County against Contractor other than those arising from faulty or defective Work, or from failure to comply with the requirements of the Contract Documents or the terms of any warranties or special guarantees specified therein.
- 14.12.2 A waiver of all claims by Contractor against County and CEI or A/E other than those previously made in writing and specifically identified by Contractor as unsettled at the time of the Application for Final Payment.

## **ARTICLE 15– SUSPENSION OF WORK AND TERMINATION**

### **15.1 County May Suspend Work.**

County may, at any time and without cause, suspend the Work in accordance with Section 8.7 of the Construction Contract.

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### **15.2 County May Terminate.**

15.2.1 County may terminate in accordance with Article 8 of the Construction Contract.

15.2.2 Where Contractor's services have been so terminated by County terminations shall not affect any rights of County against Contractor then existing or which may thereafter accrue. Any retention or payment of monies by County due Contractor after termination will not release Contractor from liability.

### **15.3 Contractor May Stop Work or Terminate.**

Contractor may terminate the Contract in accordance with Article 8 of the Construction Contract.

## **ARTICLE 16 – SETTLEMENT OF DISPUTES**

### **16.1 General.**

In order to minimize disputes and promptly facilitate settlement, the parties agree that all questions or disputes arising between them shall be settled as follows:

16.1.1 All questions relating to the Work, the performance thereof, or the requirements pertaining thereto, shall be determined by the CEI or A/E and its decision shall be recommended to the County, which shall in its sole discretion make the final decision.

16.1.2 All disputes related to Contractor's claims for increases in Contract Sum or Contract Time shall be governed by the Contract Documents.

16.1.3 Disputes that cannot be resolved by agreement of the Contractor and County shall be governed by the provisions of Article 7 of the Construction Contract unless otherwise agreed in writing.

## **ARTICLE 17 - MISCELLANEOUS**

### **17.1 Giving Notice.**

Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for who it is intended, or to a designated agent or

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representative of the party to whom notice is being given, or if delivered at or sent by registered or certified mail, postage prepaid to the last business address known to it who gives the notice.

### 17.2 Computation of Time.

When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

### 17.3 General.

17.3.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder and, in particular, but without limitation, the rights and remedies available to County thereunder shall be in addition to and shall not be construed in any way as a limitation of any rights and remedies available to it which are otherwise imposed or available by law, by special guarantee, or by other provisions of the Contract Documents, except for the liquidated damages clause which prohibits the County from seeking actual damages for delay in the event Contractor fails to achieve Substantial Completion within the contractually allotted time.

17.3.2 Should County or Contractor suffer injury or damage to its person or property because of any error, omission or act of the other or of any of its employees or agents or others for whose acts it is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.

### 17.4 Headings.

Heading and subtitles used throughout the contract documents are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

**EXHIBIT "B"****SPECIAL CONDITIONS**

The following special conditions are supplementing, not replacing nor deleting the corresponding paragraphs in the general conditions.

**ADD TO ARTICLE 2, SUBPARAGRAPH 2.5 - BEFORE STARTING CONSTRUCTION**

In addition to the provisions of the general conditions, paragraph 2.5, additional parties will be asked to attend the preconstruction conference. The list will be provided at time of award.

**ADD TO ARTICLE 6, SUBPARAGRAPH 6.7 - PERMITS**

Before starting work, the contractor shall obtain and pay for all required licenses, permits, and related fees for construction including, but not limited to: building permits, utility permits, water and sewer hook up, impact fees, and any additional permit or fee associated with the issuance of the building permit exclusive of road impact fees, which will be paid directly by the County.

**D.E. P. PERMIT**

Should a Florida Department of Environmental Protection Permit for Stormwater Discharge from Large and Small Construction Activities be required for this project, Contractor shall be responsible for using the most recent version.

**ADD TO ARTICLE 6, SUBPARAGRAPH 6.10 - USE OF PREMISES****USE OF PUBLIC STREETS**

The use of public streets shall be such as to provide a minimum of inconvenience to the public and to other traffic. The contractor shall remove any earth or other excavated material spilled from trucks, and the street cleaned to the satisfaction of the County, and at those times as directed by the County.

**CLEARING OF SITE/PARKING**

There shall be no clearing of the site for purpose of parking equipment or the storage of products/materials. All equipment shall be parked as designated by the County staff.

**ADD TO ARTICLE 6, SUBPARAGRAPH 6.12 - SAFETY AND PROTECTION****DAMAGE TO EXISTING STRUCTURES AND UTILITIES**

The contractor shall be responsible for and make good all damage to pavement beyond the limits of contract work, buildings, telephone or other cables, water pipes, sanitary pipes, or other structures, which may be encountered, whether or not shown on the drawings.

Information shown in the contract documents as to the location of existing utilities has been prepared from the most reliable data available to the architect/engineer. This information is not guaranteed, however, and it shall be this contractor's responsibility to determine the location, character, and depth of any existing utilities. It shall assist the utility companies, by every means possible, to determine said locations. Extreme caution shall be exercised to eliminate any possibility of damage to utilities resulting from contractor's activities.

**ADJUSTMENTS OF UTILITY CASTINGS, COVERS, AND BOXES**

All existing utility castings, including valve boxes, junction boxes, manholes, hand holes, pull boxes, inlets, and similar structures in the areas of grading and paving shall be adjusted by the contractor to bring them flush with the surface of the finished work, if so shown on the drawings. Where these items are not shown on the drawings (to be adjusted by contractor) will be the utility owner's responsibility to adjust them.

#### NOTIFICATION TO UTILITY COMPANIES

The excavators shall comply with FL 77-153 regarding notification of existing gas and oil pipeline company owners. Evidence of such notice shall be furnished to the County prior to excavating.

#### MAINTENANCE OF TRAFFIC

The contractor shall be responsible for the proper maintenance, control, and detour of traffic in the area of construction during the course of construction. All traffic control and maintenance procedures shall be in accordance with the requirements of Volusia County or the Florida Department of Transportation "Manual of Traffic Control of Safe Practices for Streets and Highway Construction, Maintenance, and Utility Operations." It shall be the contractor's responsibility, as bidder, prior to submitting its bid, to determine these requirements so that its proposal reflects all costs to be incurred. No claims for additional payment will be considered for costs incurred in the proper maintenance, control, detour, and protection of traffic.

At least one lane of traffic in each direction shall be maintained at all times, unless otherwise authorized by the architect/engineer. Access to each business shall be maintained during business hours. If more than one access to a business is available, closing one driveway temporarily may be done with the approval of the Inspector and the County traffic engineer.

The contractor shall provide a traffic plan for each construction phase and shall obtain approval from the County's traffic engineer at least forty-eight (48) hours in advance when a change in the plan will be required. The plan must be approved prior to implementation. All necessary signing and pavement marking will be in place prior to the change in traffic pattern. Drop-offs adjacent to a moving lane of traffic shall be properly barricaded with steady burn barricades.

The contractor shall keep all law enforcement, fire protection and ambulance agencies informed, in advance, of its construction schedules, and shall notify all such agencies, forty-eight (48) hours in advance, in the event of a detour of any roadway.

All traffic control signs, arrow boards, barricades, flashers, message boards, and similar devices shall be furnished and maintained by the contractor.

#### BARRICADES AND PROTECTION OF WORK

The contractor shall protect its work throughout its length by the erection of suitable barricades and handrails where required. It shall further indicate this work at night by the maintenance of suitable lights or flares, especially along or across thoroughfares. Wherever it is necessary to cross a public walk, it shall provide a suitable safe walkway with hand railings. It shall also comply with all laws or ordinances covering the protection of such work and the safety measures to be employed therein. The contractor shall carry out its work so as not to deny access to private property. All utility access manholes, valves, fire hydrants, and letter boxes shall be kept accessible at all times.

#### SAFETY

The Contractor shall take the necessary precautions and bear the sole responsibility for the safety of the methods employed in performing the work. The Contractor shall at all times comply with the regulations set

forth by federal, state, and local laws, rules, and regulations concerning "OSHA" and all applicable state labor laws, regulations, and standards. The Contractor shall indemnify, defend and hold harmless the County from and against all liabilities, suits, damages, costs, and expenses (including attorney's fees and court costs) which may be imposed on the County because of the Contractor, sub-contractor, or supplier's failure to comply with the regulations.

#### **ADD TO ARTICLE 13, SUBPARAGRAPH 13.2 - TESTS AND INSPECTIONS**

The County will provide all required tests necessary for field control of project. Generally these tests are proctors, densities, bearing value, and concrete quality tests. All mix designs such as asphalt, concrete, or soil cement will be furnished and paid for by the contractor. Any pre-manufactured products such as pipe, inlets, steel, etc., will require a certified mill analysis report. Any tests that have to be repeated because of failure to meet specifications will be deducted from final payment to contractor, costs of tests to be current industry rate as determined by the engineer.



Surety Assigned Bond No. \_\_\_\_\_

**PAYMENT/PERFORMANCE BOND**

This bond is given to comply with §255.05, Florida Statutes.

<b><u>CONTRACTOR</u></b>	<b><u>SURETY</u></b>	<b><u>OWNER</u></b>
[name]	_____	County of Volusia
[principal business address]	_____	123 W. Indiana Avenue
[phone number]	_____	Deland, FL 32724 (386) 736-5920

**PROJECT NAME:** BASCULE BRIDGE OPERATION CONVERSION TO RELAYS

**COUNTY CONTRACT NO.:** C1639

**PROJECT DESCRIPTION:** New relay control systems for two bascule bridges: Main St Bridge and LB Knox Bridge. The new system is to replace the existing PLC control, including but not limited to: verify wiring, install new wiring and prepare for new desk, set up detour, disconnect and remove old desk, install new desk and connect, install new PLC, test bridge operations, remove detour.

BY THIS BOND, We [contractor], as Contractor, and \_\_\_\_\_, a corporation, as Surety, are bound to the County of Volusia, Florida, herein called Owner, in the sum of \$[xx,xxx,xxx.xx], for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Contractor:

1. Performs the contract dated [execution date], between Contractor and Owner for construction of Bascule Bridge Operation Conversion to Relays, the contract documents being made a part of this bond by reference (which include all Contract Documents as defined in the Contract Documents, including this surety bond, and such alterations as may be made in said Contract Documents as therein provided for), at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Contractor with labor, materials, or supplies, used directly or indirectly by Contractor in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Contractor under the contract; and
4. To the limits of § 725.06(2), Florida Statutes, shall indemnify and hold harmless Owner, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the performance of the construction contract; and

Surety Assigned Bond No. \_\_\_\_\_

- 5. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.
- 6. Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2) and (10), Florida Statutes.
- 7. Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond, and Surety does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

**IN TESTIMONY WHEREOF**, witness the hands and seals of the parties hereto this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

*(If sole Ownership or Partnership, two (2) Witnesses required).  
(If Corporation, Secretary only will witness/attest and affix seal).*

**[TYPE LEGAL NAME OF CONTRACTOR]**

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

**WITNESS:**

**WITNESS:**

\_\_\_\_\_  
Corporate Secretary or Witness  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

*(affix corporate seal)*

**[Name of Corporate Surety]**

By: \_\_\_\_\_  
**ATTORNEY-IN-FACT**  
PrintName: \_\_\_\_\_

*(affix corporate seal)*

*(Power of Attorney must be attached)*

A.M. Best No.: \_\_\_\_\_

NAIC No.: \_\_\_\_\_