

**AGREEMENT FOR LAFAYETTE STREET SIDEWALK AND ROADWAY IMPROVEMENTS DESIGN BUILD SERVICES**

THIS AGREEMENT for the Lafayette Street Sidewalk and Roadway Improvements Design Build Services Project ("Agreement") dated this \_\_\_\_ day of \_\_\_\_\_, 2013, is made and entered into by and between LEON COUNTY, a charter county and a political subdivision of the State of Florida, (the "County") and Sandco, Inc., a Florida Corporation,( the "Contractor").

**RECITALS**

WHEREAS, the County has agreed to construct Lafayette Street Sidewalk and Roadway Improvements to be located along County Road 2196 (Lafayette Street) from Seminole Drive to Winchester Lane, Tallahassee, Florida; and

WHEREAS, the County has identified a need for survey, design and construction services for the Lafayette Street Sidewalk and Roadway Improvements; and

WHEREAS, the County has determined that it would be in the best interests of the citizens of Leon County, Florida, that the County be able to utilize services in the private sector when such services cannot be reasonably provided by the County; and

WHEREAS, the County has determined that it would be better to contract for these services than to hire the necessary personnel to satisfy the needs of the County; and

WHEREAS, in order to secure the lowest cost for these services, the County has sought and received competitive solicitations.

NOW, THEREFORE, in consideration of the following mutual covenants and promises, the sufficiency of same being acknowledged, the parties hereto agree as follows:

**1. SERVICES TO BE PROVIDED**

The Contractor hereby agrees to provide to the County services related to the survey, geotechnical investigation, design, acquisition of permits not acquired by the County, required modification to permits acquired by the County, maintenance of traffic, demolition, and construction related to the Lafayette Street Sidewalk and Roadway Improvements (hereinafter "Project") in accordance with: 1) Exhibit A, Design/Build Request For Proposal, which is attached hereto and incorporated herein; and 2) Exhibit B, Contractors Response to Request For Proposal (Technical Proposal and Price Proposal), which is attached hereto and incorporated herein.

Any work to be performed shall be upon the written request of the County Administrator or his designee, i.e. Notice to Proceed, which request shall set forth the commencing date of such work and the time within which such work shall be completed.

**2. OTHER CONTRACT REQUIREMENTS**

The Contractor shall comply with all other contract requirements set forth in Exhibit C, Local Agency Program / Federal-Aid Contract Requirements for Lafayette Street Sidewalk and Roadway Improvements Project, attached hereto and incorporated herein.

3. ORDER OF PRECEDENCE

Provisions in the following documents shall be considered to take precedence and prevail over one another, when said provisions are in conflict, in the following order:

1. Agreement
2. Exhibit A, Design / Build Request for Proposal
3. Exhibit C, Local Agency Program / Federal-Aid Contract Requirement for Lafayette Street Sidewalk and Roadway Improvements Project
4. Exhibit D, Project Schedule
5. Exhibit B, Contractor's Response to Request for Proposal

4. TIME AND LIQUIDATED DAMAGES

The work to be performed under this Agreement shall be commenced within 15 days of the Notice to Proceed. All work related to the Project, as further described in Section 1 above, to be performed under this Agreement shall be completed within \_\_\_\_\_ consecutive calendar days of the Notice to Proceed. If the work to be performed under this Agreement as described in Section 1 above is not completed within the time set forth above, or within such extra time as may be granted by the County, the Contractor shall be deemed to be in default. For each day the Contractor is in default, the Contractor or its Surety shall pay to the County, not as a penalty, but as liquidated damages, an amount based on the bid price and calculated according to Section 8-10 of the FDOT's Standard Specifications for Road and Bridge Construction, 2010 Edition.

Permitting the Contractor to continue and finish the work or any part of it after the expiration of the time allowed, including extensions, if any, shall in no way act as a waiver on the part of County of the liquidated damages due under this Agreement.

5. TERM AND PROJECT SCHEDULE

A. TERM

The "Effective Date" is the date that this Agreement is fully executed by Contractor and the County. This Agreement shall commence on the Effective Date and, except as otherwise provided herein or as may be required to give effect to provisions hereof, shall terminate when the Project is complete, the County has notified Contractor of its final acceptance of the Project and all performance required hereunder is complete.

B. PROJECT SCHEDULE

1. Initial Project Schedule

Contractor and the County have developed a Project Schedule, Exhibit D, attached hereto and incorporated herein. This schedule indicates in detail all of the tasks and related subtasks (including, but not limited to, the plans and specifications, equipment delivery, installation, testing, construction, etc.) to be performed by Contractor under this Agreement, the dates said tasks and subtasks shall be completed, and a final completion date for the Project. In no event, and notwithstanding any other provision of this Agreement, shall the date of Final Acceptance occur more than \_\_\_\_\_ consecutive days after the issuance of the Notice to Proceed.

2. Updated Project Schedule

The Project Schedule shall be updated and submitted to the Project Manager by Contractor with each request for payment. The updated Project Schedule shall include the actual and projected completion dates of each of the tasks and subtasks identified in Exhibit D, Project Schedule.

3. Contractor Schedule Obligations

Contractor shall complete, in a timely manner, each of the tasks and subtasks identified in the Project Schedule. Contractor will order and arrange for delivery of equipment and materials in accordance with the Project Schedule or in such manner, as may be approved by the County, so as to provide for the orderly progress of work under this Agreement while, at the same time, insuring that no equipment or material is delivered to the Project site until that site is properly prepared for such delivery.

6. SURVIVALBILITY CLAUSE

Any term, condition, covenant, or obligation which requires performance by a Party subsequent to termination of this Agreement shall remain enforceable against such Party subsequent to such termination.

7. GUARANTEED MAXIMUM PRICE

The Contractor agrees that for the performance of the Services as outlined in Section 1 above and all work contemplated by this Agreement, it shall be remunerated by the County according to the unit prices set forth in the approved Schedule of Values, which shall, within ten (10) days of issuance of the Notice to Proceed be appended to and made a part of Exhibit B, Contractor's Response to Request for Proposal (Technical Proposal and Price Proposal), but in no event shall such recommendation exceed the Guaranteed Maximum Price (GMP) set forth below.

Upon acceptance of the plans and specifications as set forth in Section 16, the Parties shall agree to a Guaranteed Maximum Price in accordance with Exhibit B, but in no event to exceed \$1,931,500.00.

The performance of the County of any of its obligations under this Agreement shall be subject to and contingent upon the availability of funds lawfully expendable for the purposes of this Agreement.

8. PAYMENTS

The County shall make such payments upon submission and approval of an invoice for services in accordance with the Florida Prompt Payment Act.

PAYMENT INFORMATION REQUIREMENTS

A. The Project Manager for the County is:

Name: Chris Muehlemann  
Street Address: 2280 Miccosukee Road  
City, State, Zip Code: Tallahassee, FL 32308  
Telephone: (850) 606-1536  
E-mail: [muehlemannc@leoncountyfl.gov](mailto:muehlemannc@leoncountyfl.gov)

- B. The Contractor's Representative in charge of the Project is:

Name:  
Street Address:  
City, State, Zip Code:  
Telephone:  
E-mail:

- C. Notices to the Contractor are to be submitted to:

Name:  
Street Address:  
City, State, Zip Code  
Telephone:  
E-mail:

- D. Invoices are to be submitted to:

Name: Chris Muehlemann  
Street Address: 2280 Miccosukee Road  
City, State, Zip Code: Tallahassee, FL 32308  
Telephone: (850) 606-1536  
E-mail: [muehlemannc@leoncountyfl.gov](mailto:muehlemannc@leoncountyfl.gov)

- E. Proper form for a payment request for this contract is the Contractor's Application for Payment, EJCDC document No. C620 (2007 Edition).

- F. Payment Dispute Resolution: Section 14.1 of the Leon County Purchasing and Minority, Women and Small Business Enterprise Policy shall solely govern procedures for payment disputes under this Agreement.

- G. Monthly Statements and Retainage - The Contractor shall submit to the County a monthly cost statement, along with all other reports provided for under this Agreement, showing in detail all monies paid out, costs accumulated, or costs incurred on account of the Project during the previous period and included in the Contractor's fees due. Ten percent (10%) retainage shall be held on all payments until the Project reaches Substantial Completion. At Substantial Completion, the County may approve a reduction of the retainage from ten percent (10%) to five percent (5%) at the County's sole discretion.

- H. Final Payment – Final payment constituting the unpaid balance for all services rendered under this Agreement constituting the Contractor's fee, shall be due and payable after the County has accepted the Project, provided the Project be then finally and satisfactorily completed, and that this Agreement has been finally and fully performed. However, should there remain work to be completed, the Contractor and the County shall list those items prior to receiving final payment and the County may retain a sum equal to two hundred percent (200%) of the estimated costs of completing the unfinished work and a proportionate share of the Contractor's retainage, provided that said unfinished work items are listed separately and the estimated costs of completing any unfinished items are likewise listed separately. Thereafter, the County shall pay to the Contractor, monthly, the amount retained for each incomplete item after each of said items is completed.

9. PERMITS

The Contractor shall obtain and pay for all necessary permits as required by law.

10. LICENSES

The Contractor shall be responsible for obtaining and maintaining his city or county occupational license and any licenses required pursuant to the laws of Leon County, the City of Tallahassee, or the State of Florida. Should the Contractor, by reason of revocation, failure to renew, or any other reason, fail to maintain his license to operate, the Contractor shall be in default as of the date such license is lost.

11. INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

Additionally, the City of Tallahassee is to be covered as an additional insured on all coverages that relate to the Water and Wastewater Utility work as set forth in Exhibit A, Design/Build Request for Proposal.

A. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. (Non-owned, Hired Car).
3. Workers' Compensation and Employers Liability: Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws and Employer's Liability with a limit of \$500,000 per accident, \$500,000 disease policy limit, \$500,000 disease each employee. Waiver of Subrogation in lieu of Additional Insured is required.

B. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages (County is to be named as Additional Insured).
  - a. The County and the City, its officers, officials, employees and volunteers are to be covered as insureds as respects; liability arising out of activities performed by or on behalf of the

Contractor, including the insured's general supervision of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protections afforded the County, its officers, officials, employees or volunteers.

- b. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance of self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the county, its officers, officials, employees or volunteers.
- d. The Contractor's insurance shall apply separately to each insured against whom claims are made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County.

- D. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.
- E. Verification of Coverage. Contractor shall furnish the County with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies at any time.
- F. Subcontractors. Contractors shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

12. PERFORMANCE AND PAYMENT BOND

Performance and Payment Bond

At the time of execution of this Agreement, Contractor shall deliver to the County two Performance and Payment bonds, to secure the faithful performance by Contractor of all the terms, covenants, and conditions of this Agreement and the prompt payment, by Contractor, of amounts due all persons supplying labor, services, equipment, or material used in the prosecution of the work to be performed under this Agreement and any and all duly authorized modifications thereof. Such bonds shall meet all requirements of applicable law and shall be issued by a surety acceptable to the County, in the form approved by the County, and in the following manner:



against all liabilities, damages, losses, and costs, including, but not limited to, a reasonable attorney's fee, to the extent caused by negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of this Agreement.

The County may, at its sole option, defend itself or require the Contractor to provide the defense. The Contractor acknowledges that the sum of Ten (\$10.00) Dollars of the amount paid to the Contractor constitutes sufficient consideration for the contractor's indemnification of the County, its officials, officers and employees.

The Contractor shall be liable to the County for any reasonable costs incurred by it to correct, modify, or redesign any portion of the project, which is the subject of the services provided under this Agreement, that is found to be defective or not in accordance with this Agreement, as a result and to the extent caused by the negligence, recklessness, or intentional wrongful conduct on the part of the Contractor and other persons employed or utilized by the Contractor in the performance of this Agreement.

14. AUDITS, RECORDS, AND RECORDS RETENTION

The Contractor agrees:

- a. To establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices, which sufficiently and properly reflect all revenues and expenditures of funds provided by the County under this Agreement.
- b. To retain all financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of five (5) years after termination of the Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement.
- c. Upon completion of the Project or termination of the Agreement and at the request of the County, the Contractor will cooperate with the County to facilitate the duplication and transfer of any said records or documents during the required retention period as specified in paragraph b above.
- d. To assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, state, or other personnel duly authorized by the County.
- e. Persons duly authorized by the County and Federal auditors, pursuant to 45 CFR, Part 92.36(l)(10), shall have full access to and the right to examine any of Contractor's records and documents related to this Agreement, regardless of the form in which kept, at all reasonable times for as long as records are retained.
- f. To include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

15. MONITORING

The Contractor agrees to permit persons duly authorized by the County to inspect any records, papers, documents, facilities, goods, and services of the Contractor which are relevant to this Agreement, and interview any clients and employees of the Contractor to assure the County of satisfactory performance of the terms and conditions of this Agreement.

Following such evaluation, the County will deliver to the Contractor a written report of its findings and will include written recommendations with regard to the Contractor's performance of the terms and conditions of this Agreement. The Contractor will correct all noted deficiencies identified by the County within the specified period of time set forth in the recommendations. The Contractor's failure to correct noted deficiencies may, at the sole and exclusive discretion of the County, result in any one or any combination of the following: (1) the Contractor being deemed in breach or default of this Agreement; (2) the withholding of payments to the Contractor by the County; and (3) the termination of this Agreement for cause.

16. APPROVAL OF DOCUMENTS AND SPECIFICATIONS

Prior to the construction phase of the Project, the Contractor shall submit for approval by the County all engineering or design documents and specifications, not later than the date for submittal set forth in Exhibit D, Project Schedule.

Notwithstanding any other provision of this Agreement, approval by the County of any engineering or design documents and specifications, any other similar submittal, or any part, thereof, shall not relieve Contractor of the responsibility to meet all of the requirements for the Project as set forth in this Agreement, and to correct any errors or omissions in said documents or specifications and associated performance under this Agreement. Contractor shall have no claim for additional costs resulting from any such corrections or performance or for any delays in performance arising or resulting from such correction or performance. The Parties, by mutual agreement, may extend the Project Schedule by the number of days of any such delay if such delay will not cause work being performed by the County to be delayed.

17. WARRANTIES, GUARANTEES, AND CERTIFICATIONS

General: The required final constructed product shall be a complete warranted and guaranteed Project both in terms of the design, materials provided and the installation, labor, equipment, tools and methods used.

- A. **Manufacturers:** Upon completion of the Project, the material manufacturers shall certify the installation is according to their recommendations and instructions and issue a warranty pursuant to this Section, as a condition of Project close-out and final payment.
- B. **Contractors:** Upon completion of the Project, the Contractor and their subcontractors shall certify the installation is according to their recommendations and instructions and issue warranties and guarantees pursuant to this Section, as a condition of Project close-out and final payment.
- C. **Warranty:** Where any work on the Project is performed by the Contractor's own forces or by subcontractors under contract with the Contractor, the Contractor shall warrant that all materials and equipment included in such work will be new except where indicated otherwise in construction documents, and that such work on the Project will be of good quality, free from improper workmanship and defective materials and in full conformance with the drawings and specifications. With respect to the same work on the Project, the Contractor further agrees to correct all work found by the County to be defective in material and/or workmanship or not in conformance with the drawings and specifications for a period of ten (10) two (2) years from the date of completion of the Project or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the specifications. The Contractor shall collect and deliver to the County any specific written warranties given by others as required by this Agreement. Also, the Contractor shall conduct, jointly with the County, a warranty inspection within thirty (30) days after final completion. For Landscaping, maintenance and establishment of plant materials shall begin immediately after each plant is planted and continue for 24

months after substantial completion inspection and until project acceptance for maintenance by the County and City Representatives at the end of a 730 day Maintenance and Establishment period.

- D. **Warranties:** Contractor and materials manufacturers must jointly and severally issue a minimum warranty of five (5) years against material defects for all manufactured products installed into the work. The manufacturer must confirm the ability of the Contractor and the manufacturer to issue this warranty in a written statement by an authorized agent of the manufacturer. This statement must be included with the submittals. Issue warranties to "Leon County, Florida" prior to filing a request for final payment. In relation to work performed pursuant to the Design/Build Criteria Package for Lafayette Street Water and Wastewater Utility Adjustments and Relocations, all manufacturers' special warranties for the various utility components shall be made transferable to the City upon final acceptance of the project by Leon County.
- E. **Guarantees:** The Contractor shall guarantee the applications with respect to workmanship and proper application for five (5) years from the date of acceptance by the material manufacturer. Should any system failures covered under the warranty occur during this period, corrective action will be taken by the Contractor to repair the installation to the satisfaction of the County (and the City as applicable) and material manufacturer. All corrective work will be done at no cost to the County or the City.

**18. CHANGE IN THE PROJECT**

Change Orders - The County, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, the GMP, and the construction completion date contained in Exhibit D, being adjusted accordingly. All changes in the Project not covered by an authorized contingency shall be authorized by Change Order signed by the County before the change is implemented.

- A. Change Order Definition - A Change Order is a written order to the Contractor signed by the County issued after the execution of this Agreement, authorizing a Change in the Project, the Contractor's fee, or the construction completion date contained in Exhibit D. Each adjustment in the GMP resulting from a change order shall clearly separate the amount attributable to the cost of the Project.
- B. Acceptable Ways Of Determining Increases Or Decreases In The GMP On Change Orders - The increase or decrease in the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:
  - 1. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the County;
  - 2. by unit prices stated in the Agreement or subsequently agreed upon.
- C. Adjustments In Unit Prices & GMP Due To Inequitable Quantity Changes - If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to the County or the Contractor, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted by the County.
- D. Minor Changes In The PROJECT - The Project Manager will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the construction completion date set forth in Exhibit D and not inconsistent with the intent of the drawings and

specifications. Such changes shall be effected by written order.

19. TERMINATION

The County may terminate this Agreement without cause, by giving the Contractor thirty (30) days written notice of termination. Either party may terminate this Agreement for cause by giving the other party hereto thirty (30) days written notice of termination. The County shall not be required to give Contractor such thirty (30) day written notice if, in the opinion of the County, the Contractor is unable to perform its obligations hereunder, or if in the County's opinion, the services being provided are not satisfactory. In such case, the County may immediately terminate the Agreement by mailing a notice of termination to the Contractor.

This Agreement may be terminated by the County if the Contractor is found to have submitted a false certification as required under Section 215.471(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria.

20. PUBLIC ENTITY CRIMES STATEMENT

In accordance with Section 287.133, Florida Statutes, Contractor hereby certifies that to the best of his knowledge and belief neither Contractor nor his affiliates has been convicted of a public entity crime. Contractor and his affiliates shall provide the County with a completed public entity crime statement form no later than January 15 of each year this Agreement is in effect. Violation of this section by the Contractor shall be grounds for cancellation of this Agreement by the County.

21. UNAUTHORIZED ALIEN(S)

The Contractor agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. The County shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the County.

22. EMPLOYMENT ELIGIBILITY VERIFICATION

- A. Contractor agrees that it will enroll and participate in the federal E-Verify Program for Employment Verification under the terms provided in the "Memorandum of Understanding" governing the program. Contractor further agrees to provide to the County, within thirty days of the effective date of this contract/amendment/extension, documentation of such enrollment in the form of a copy of the E-Verify "Edit Company Profile" screen, which contains proof of enrollment in the E-Verify Program (this page can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).
- B. Contractor further agrees that it will require each subcontractor that performs work under this contract to enroll and participate in the E-Verify Program within sixty days of the effective date of this contract/amendment/extension or within sixty days of the effective date of the contract between the Contractor and the subcontractor, whichever is later. The Contractor shall obtain from the subcontractor(s) a copy of the "Edit Company Profile" screen indicating enrollment in the E-Verify Program and make such record(s) available to the Agency upon request.
- C. Contractor will utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all persons employed during the term of the Agreement by Contractor to

perform employment duties within Florida; and (b) all persons (including subcontractors) assigned by Contractor to perform work pursuant to the Agreement.

1. Contractor must use E-Verify to initiate verification of employment eligibility for all persons employed during the term of the Agreement by Contractor to perform employment duties within Florida within 3 business days after the date of hire.
2. Contractor must initiate verification of each person (including subcontractors) assigned by Contractor to perform work pursuant to the Agreement within 60 calendar days after the date of execution of this contract or within 30 days after assignment to perform work pursuant to the Agreement, whichever is later.

- D. Contractor further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the County or other authorized state entity consistent with the terms of the Memorandum of Understanding.
- E. Compliance with the terms of this Employment Eligibility Verification provision is made an express condition of this contract and the County may treat a failure to comply as a material breach of the contract.

23. DEBARMENT

- A. The Contractor shall certify to the best of its knowledge and belief, that it and its principals:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  2. Have not within a three-year period preceding the Effective Date hereof been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of these offenses enumerated in paragraph (1)(b) of this section; and
  4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- B. If the Contractor is unable to certify to any of the statements in this section, such contractor shall provide an explanation to the Project Manager.
- C. The Contractor agrees that no subcontract will be issued for this Project to any party which is debarred or suspended from eligibility to receive federally funded contracts.

24. DELAY

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

25. **LOBBYING**

In accordance with 49 CFR 20 the Contractor hereby certifies that funds will not be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

26. **MISCELLANEOUS**

**STATUS**

The Contractor at all times relevant to this Agreement shall be an independent contractor and in no event shall the Contractor nor any employees or sub-contractors under it be considered to be employees of the County.

**ASSIGNMENTS**

This Agreement is not assignable by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld. After and upon approved assignment, this Agreement shall bind and inure to the benefit of the Parties and their respective successors, assignees, transferees, and legal representatives.

**REVISIONS**

In any case where, in fulfilling the requirements of this Agreement or of any guarantee, embraced in or required thereby it is necessary for the Contractor to deviate from the requirements of the bid, Contractor shall obtain the prior written consent of the County.

**VENUE**

Venue for all actions arising under this Agreement shall lie in Leon County, Florida.

**CONSTRUCTION**

The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida.

**NON-WAIVER**

Failure by the County to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same, or of any other terms, conditions or acts; but the same shall be and remain at all times in full force and effect.

THIRD PARTY BENEFICIARY

The City of Tallahassee, with respect to the Water and Wastewater Utility work as described in the Design/Build RFP, Exhibit A, is intended to be a third party beneficiary of this agreement with all incumbent rights and privileges thereby.

WHEREFORE, the parties have set their hands and seals effective the date whereupon the last party executes this Agreement (“Effective Date”)

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DRAFT

CONTRACTOR

WITNESS: \_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_, President

WITNESS: \_\_\_\_\_

DATE \_\_\_\_\_

(CORPORATE SEAL)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By \_\_\_\_\_, of \_\_\_\_\_,  
(Name of officer or agent, title of officer or agent) (Name of corporation acknowledging)

a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally  
(State or place of incorporation)

known to me or has produced \_\_\_\_\_ as identification. (type of identification)

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Print, Type or Stamp Name of Notary

LEON COUNTY, FLORIDA

BY: \_\_\_\_\_  
Vincent S. Long  
County Administrator

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

ATTEST:  
Bob Inzer, Clerk of the Court  
Leon County, Florida

BY: \_\_\_\_\_

Approved as to Form:  
County Attorney's Office

BY: \_\_\_\_\_  
Herbert W.A. Thiele, Esq.