



**AGREEMENT BETWEEN COUNTY AND CONTRACTOR
FOR CONSTRUCTION SERVICES**

THIS AGREEMENT, effective this 1st day of September in the year, 2015, between:

MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida, (hereinafter COUNTY), located at 2401 S.E. Monterey Road, Stuart, FL 34996

AND the CONTRACTOR: Wharton-Smith, Inc.
(hereinafter CONTRACTOR) 750 Monroe Road
 Sanford, FL 32771

Contract Name: Water & Wastewater Treatment Plant Construction

Contract Number: RFB2015-2813

Total Contract Value: \$5,000,000.00 (to all vendors combined over 5 years)

Contract Term: Three (3) years plus two optional 1-year renewals

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ARTICLE 1 DEFINITIONS

1.1 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Actual Costs.*

- a. costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- b. cost of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- c. rental cost of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- d. costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;
- e. additional cost of field supervision and field office personnel directly attributable to the charge, exclusive of the cost of estimating, contract administration, and purchasing.

2. *Addenda.* Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

3. *Agreement.* The written instrument which is evidence of the agreement between COUNTY and CONTRACTOR covering the Work. Also referred to as "Contract".

4. *Bonds.* Performance bond and payment bond and other instruments of security, furnished by the CONTRACTOR and its surety in accordance with the Contract Documents and in accordance with the law of Florida.

5. *Change Order.* A written document which is signed by CONTRACTOR and COUNTY and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

6. *Claim.* A demand or assertion by COUNTY or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

7. *Contract Documents.* The Contract Documents establish the rights and obligations of the parties and include the following: Agreement (including Exhibits), Work Order, entire bid package including Advertisement, all Addenda and Instructions to Bidders, CONTRACTOR'S completed Bid Form package, Notice of Award, Notice to Proceed, drawings, specifications, plans, data, studies, surveys, calculations, permit applications, estimates, photographs, reports, approved submittals, and other documents prepared by, through, or under CONTRACTOR that fix, depict and/or describe the size, quality and character of the Project, the Bonds, these General

Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Architect/Engineer's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

8. *Contract Price.* The moneys paid to CONTRACTOR under Contract Documents.
9. *Contract Time.* The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by Architect/Engineer's written recommendation of final payment.
10. *CONTRACTOR.* The individual or entity with whom COUNTY has entered into the Agreement.”.
11. *Drawings.* That part of the Contract Documents prepared or approved by an Architect or Engineer which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.
12. *Effective Date of the Agreement.* The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
13. *Field Order.* A written order issued by Architect/Engineer's or COUNTY which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
14. *Final Completion or Final Acceptance.* The completion of all Work called for under the Contract Documents, including, but not limited to, satisfactory operation of all equipment (other than COUNTY supplied equipment or facilities or those installed by separate CONTRACTORS); correction of all punch list items to the satisfaction of COUNTY, payment of all trade CONTRACTORS, subcontractors, and materialmen; settlement of all claims, if any; payment and release of all mechanic's, materialmen's, and similar liens; delivery of all guarantees, equipment operation and maintenance manuals, as-built drawings, building certificates, electrical certificates, mechanical certificates, plumbing certificates, and all other required approvals and acceptances by any municipality within Martin County, Martin County itself, the State of Florida or other authorities or agencies having jurisdiction; and removal of all rubbish, tools, scaffolding, and surplus materials and equipment from the Work site.
15. *Notice to Proceed.* A written notice given by COUNTY to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.
16. *Public Record.* All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in

connection with the transaction of official business between the COUNTY and the CONTRACTOR.

17. *Samples.* Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

18. *Shop Drawings.* All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

19. *Specifications.* That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

20. *Substantial Completion.* The stage in construction when the Work can be utilized for the purposes for which it was intended, as well as the satisfaction of the following requirements: (1) the items that affect operational integrity and function of the Project must be capable of continuous use; (2) all permits and other regulatory requirements must be satisfied; and (3) a Certificate of Occupancy must be issued where one is required. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

21. *Surety.* The corporate body that is responsible for the CONTRACTOR in connection with the Work as set forth in the Bonds and that is included in the most recent United States Department of the Treasury List of Acceptable Sureties and authorized to issue surety bonds in Florida, and which maintains a surety rating of “A-” or better or equivalent rating by a nationally recognized rating agency.

22. *Underground Facilities.* All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

23. *Work.* Services as defined in each individual Work Order to be paid for on the basis of R.S. Means unit prices with discount indicated in CONTRACTOR’s bid.

23. *Work Order.* A formal document that is dated, serially numbered, and executed by both the COUNTY and the CONTRACTOR in response to COUNTY’s request for proposal, by which COUNTY accepts CONTRACTOR's proposal for specific Services and CONTRACTOR indicates a willingness to perform such specific Services under the terms and conditions specified in this AGREEMENT.

ARTICLE 2 WORK/PRELIMINARY REQUIREMENTS

2.1 Work. CONTRACTOR agrees to furnish and complete all authorized and approved

work, materials, supplies, tools, furnishings, fixtures, labor, services, equipment, construction management and contract administration services for site development, permitting, regulatory matters, testing, environmental mitigation, traffic, landscaping, accounting, coordination, and construction of the Project..

2.2 Commencement of Work and Notices to Proceed. The Date of Commencement of all Work shall be the date indicated in the Notice to Proceed and/or Work Order. Notice to Proceed as to each Work Order shall be issued by the Project Manager after the CONTRACTOR has delivered to the COUNTY the executed Work Order, the Bonds and Insurance Certificates in accordance with the Work Order and AGREEMENT, and the Board has approved this AGREEMENT. No Work shall be performed by the CONTRACTOR or its Professionals, subconsultants, or subcontractors, and no irrevocable commitments to vendors shall be made prior to the Date of Commencement, at which time, CONTRACTOR may commence to perform Work.

2.3 Nothing contained in any Work Order shall conflict with the terms of this AGREEMENT, and the terms of this AGREEMENT shall be deemed to be incorporated in each individual Work Order as if fully set forth therein. A Work Order shall contain the following:

- a. A description of the specific Services to be performed, a schedule and amount of compensation to be paid with sufficient detail so as to identify all of the various elements of costs such as, labor rates by classification, hours for each classification, extended price, subcontracted labor (also broken out), material, other direct costs, overhead rate, indirect rate, and profit/fee. The sufficiency of such budget detail is subject to the approval of the COUNTY; and
- b. Any other additional instructions or provisions relating to the specific Services authorized pursuant to each Work Order that do not conflict with the terms of this Agreement.

2.4 Preconstruction Conference(s). If required by the specific services outlined in the Work Order, the CONTRACTOR shall meet with the COUNTY for review and acceptance of the CONTRACTOR'S initial submittals, CPM Schedule, Final Schedule of Values, personnel and Subcontractor list, to review mobilization requirements, to establish procedures for handling shop drawings and other Submittals and Applications for Payment, and to establish a working understanding among the parties as to the Work.

2.5 Assumption of Risks. CONTRACTOR shall become familiar with and prepare for the normal weather conditions existing in Martin County, Florida. Normal weather conditions are expected to impact the Work in numerous ways, including but not limited to, delays during and after periods of rainfall, temporary flooding and ponding, wet ground, high winds and debris. CONTRACTOR'S Contract Price and Project Schedule, and any subsequent approved revisions thereto, shall sufficiently anticipate and include normal weather Days as reflected by 10-year average of historical records produced by the National Weather Service. Additionally, the CONTRACTOR assumes the risk for all costs associated with concealed Site conditions which are foreseeable through the exercise of due diligence. Again, it shall be the obligation of CONTRACTOR to fully investigate the Site and provide sufficient contingency amounts for conditions which are foreseeable.

ARTICLE 3 CONTRACT PRICE

The OWNER shall pay the CONTRACTOR for the performance of Work outlined in each individual Work Order issued in accordance with the Contract Documents, the fixed Contract Price outlined in each individual Work Order, based on the unit costs in the Bid. The obligations of the OWNER under this Agreement are subject to the availability of funds lawfully appropriated for the Project by the Board of County Commissioners of Martin County.

ARTICLE 4 CONTRACTOR RESPONSIBILITIES

4.1 General Responsibilities

1. 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, specifications set forth in each Work Order, 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 it has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Specifications and made such additional surveys and investigations as it deems necessary for the performance of the Work at the Contract Price 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. The CONTRACTOR shall give all notices and comply with all municipal, local, state and federal laws, ordinances, codes, rules, licenses, and regulations applicable to the Work. If the CONTRACTOR observes that any of the AGREEMENT is contradictory to such laws, rules, and regulations, it shall notify the Project Manager promptly in writing. If the CONTRACTOR performs any Work that it knows or should have known to be contrary to such laws, ordinances, rules, and regulations, it shall bear all related costs.

3. CONTRACTOR understands and acknowledges that all documents and materials provided with the RFP and any addenda, are general and preliminary, and that CONTRACTOR shall not rely on the accuracy or completeness thereof. CONTRACTOR acknowledges that its duties hereunder shall not be excused or discharged in any respect based on the incompleteness or inaccuracy of any such documents or materials.

4. CONTRACTOR shall be responsible to the COUNTY for acts and omissions of CONTRACTOR and CONTRACTOR'S agents, employees, Professionals, subconsultants, subcontractors, and all other parties performing Work by, through and under CONTRACTOR.

5. CONTRACTOR shall be responsible for the management, coordination and supervision of all design, permitting, and construction means, methods, techniques, sequences and procedures for completion of the Work.

6. The CONTRACTOR agrees to bind specifically every Professional, subconsultant and subcontractor to the applicable terms and conditions of the AGREEMENT, for the benefit of

the COUNTY.

7. CONTRACTOR represents that it is fully experienced and properly qualified to perform the Work under the Contract Documents and that it is properly licensed, equipped, organized and financed to perform such Work.

8. CONTRACTOR shall act as an independent CONTRACTOR and not as the agent of COUNTY. The CONTRACTOR shall supervise and direct the Work and shall be solely responsible for the means, methods, techniques, sequences and procedures of construction subject to compliance with the Contract Documents.

9. The CONTRACTOR shall employ and maintain a full time on-site an Authorized Representative who shall have been designated in writing by the CONTRACTOR and pre-approved by the COUNTY, dedicated to each Work Order full time, shall have full authority to act on behalf of the CONTRACTOR, and all communications given to the Authorized Representative shall be as binding as if given to the CONTRACTOR. Copies of written communications given to the CONTRACTOR'S Authorized Representative shall be mailed to the address set forth in the Contract for notices. Nothing contained herein shall be construed as modifying the CONTRACTOR'S duty of supervision and fiscal management as provided by Florida law. The COUNTY shall have the right to direct removal of any Authorized Representative of the CONTRACTOR assigned to the Project. Any change in the Authorized Representative of CONTRACTOR assigned to the Project shall be subject to the COUNTY'S prior approval.

10. The CONTRACTOR shall not employ any subcontractor or consultant against whom the COUNTY may have reasonable objection.

11. The CONTRACTOR represents to the COUNTY that the CONTRACTOR (and its officers, directors, partners or shareholders who holds ten (10%) percent or more of the outstanding stock of the CONTRACTOR), does not have any financial interest in or with (i.e. is not an officer, director, partner or ten percent plus shareholder) any person, entity, subcontractor, consultant, design professional, materialman, supplier, or any other subcontractor performing any Work or the Project. CONTRACTOR agrees to obtain prior written consent from the COUNTY before entering into any Contract on this Project in which it has a common financial interest.

12. The CONTRACTOR shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings on-site in good order and annotated to show all changes made during the construction process. Final acceptance of the Work will be withheld until all such modifications have been properly inserted electronically into the design documents (thus creating "As-Built Documents") and provided to the COUNTY, and the COUNTY approves those As-Built Documents.

13. The CONTRACTOR shall, at its expense, attend any and all meetings called by COUNTY to discuss the Work under the Contract.

14. CONTRACTOR shall deliver to the COUNTY both prior to commencing each Work Order and also at the completion of the Project and before receipt of Final Payment, a DVD

video of the Project showing the site before Work is commenced, the site as it progresses on a monthly basis, and after Work has been completed for any vertical construction project valued over \$200,000.00. CONTRACTOR shall identify on the DVD the station numbers as those areas of the Project are taped, as well as the date recorded. The cost of the recording is included in the bid submitted by the CONTRACTOR.

15. CONTRACTOR shall not establish and shall not allow its employees to engage in any commercial activities on the site of any Work Order.

16. The CONTRACTOR shall, at its expense, arrange for, develop and maintain all utilities in Work areas to meet the requirements of the Contract. Such utilities shall be furnished by CONTRACTOR at no additional cost to the COUNTY, and shall include, but not be limited to, the following: telephone service for the CONTRACTOR'S use; construction power as required at each point of construction; and water as required throughout the construction. Prior to final acceptance of the Work the CONTRACTOR shall, at its expense, satisfactorily remove and dispose of all temporary utilities developed to meet the requirements of the Contract. The COUNTY will assume the utility costs directly related to its usage of areas in which it has taken Beneficial Occupancy.

17. 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 either the Florida Department of Transportation, Martin County, or the local municipality, within their respective area of jurisdiction. It shall be the CONTRACTOR'S responsibility, as Bidder, prior to submitting its Bid, to determine the requirements of these agencies 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. The CONTRACTOR shall notify all such agencies and the COUNTY 48 hours in advance of any traffic detour.

18 The CONTRACTOR is responsible for adequate drainage at all times. Existing functioning storm sewers, gutters, ditches, and other run-off facilities shall not be obstructed.

19. Fire hydrant on or adjacent to the highway shall be kept accessible and no obstruction shall be placed within fifteen feet (15') of any hydrant.

20. Heavy Equipment shall not be operated close enough to pipe headwalls or other structures to cause their displacement.

21. Where the COUNTY determines it to be necessary for maintaining the security of livestock or adjacent property or for protection of pedestrians, the CONTRACTOR shall erect and operate under temporary security fencing. Permanent fencing shall be addressed as required by the Plans and Specifications.

ARTICLE 5 PAYMENT

5.1 Schedule of Values. The CONTRACTOR's Unit Price Proposal for each Work Order shall serve as the schedule of values for basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the COUNTY. Progress payments on account of Work will be based on the number of units completed.

5.2 Progress Payments

A. Applications for Payments

1. All payments made to the CONTRACTOR, whether Partial or Final, shall be strictly in accordance with Section 218.70, Florida Statutes, addressing payment, retainage and punchlist procedures for the performance of public works projects to which the Project applies. CONTRACTOR is required to include Section 218.70, Florida Statutes, in all Subcontractor and vendor agreements. At least 25 business days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to COUNTY for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. Such supporting documents shall include but not be limited to releases from all parties who have served Notices to CONTRACTOR for the Project, a current release from CONTRACTOR releasing all claims, other than those previously submitted pursuant to Article 10 herein, through the date of the Application for Payment; and a monthly dated CPM schedule for Projects valued over \$200,000.00. Submission of this supporting documentation shall be a condition precedent to the CONTRACTOR'S entitlement to receive payment. 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 Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that COUNTY has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect COUNTY'S interest therein, all of which must be satisfactory to COUNTY.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR'S legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be 10% of the Contract Price for all projects valued at \$200,000.00 or more, or as otherwise stipulated in the Work Order. Retainage will not be held for projects valued under \$200,000.00. After 50% completion of the construction, the amount of retainage withheld from each subsequent progress payment shall be five (5%) percent. "Fifty Percent Completion" of the Work is defined as that point in time where 50% of the overall value of the Work items incorporated and which will remain in place subsequent to final completion of the Work have been completed, based upon the schedule of values contained in the Contract. As such, and by way of example, the value of

CONTRACTORS mobilization, general conditions, supervision or like items which do not involve permanent incorporation of Work do not apply to the determination of “Fifty Percent Completion” of the Work for purposes of establishing entitlement to a reduction of retainage.

B. Review of Applications

1. COUNTY will, within 10 business days after the date on which the Application for Payment is stamped as received by the COUNTY, either process the payment or return the Application to CONTRACTOR indicating in writing COUNTY’S reasons for refusing to recommend payment. COUNTY may reject the payment request or invoice within 20 business days after the date on which the payment request or invoice is stamped as received by the COUNTY. The rejection must be in writing and must specify the deficiency in the payment request or invoice and the action necessary to make the payment request or invoice proper. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. The corrected payment requests or invoices must be paid or rejected on the later of:

- a. Ten (10) business days after the date the corrected payment request or invoice is stamped as received; or
- b. If the governing body is required by ordinance, charter or other law to approve or reject the corrected payment request, the first business day after the next regularly scheduled meeting of the COUNTY held after the corrected payment request is stamped as received.

2. COUNTY and/or Architect/Engineer’s recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to COUNTY, based on COUNTY and/or Architect/Engineer’s observations on the Site of the executed Work as an experienced and qualified professional and on COUNTY and/or ENGINEER’S review of the Application for Payment and the accompanying data and schedules, that to the best of COUNTY and/or Architect/Engineer’s knowledge, information and belief:

- a. the Work has progressed to the point indicated;
- b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work, and to any other qualifications stated in the recommendation); and
- c. the conditions precedent to CONTRACTOR’S being entitled to such payment appear to have been fulfilled in so far as it is Architect/Engineer’s responsibility to observe the Work.

3. By recommending any such payment Architect/Engineer will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Architect/Engineer in the Contract Documents; or (ii) that there may not be other matters

or issues between the parties that might entitle CONTRACTOR to be paid additionally by COUNTY or entitle COUNTY to withhold payment to CONTRACTOR.

4. Neither COUNTY and/or Architect/Engineer's review of CONTRACTOR'S Work for the purposes of recommending payments nor Architect/Engineer's recommendation of any payment, including final payment, will impose responsibility on Architect/Engineer to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR'S failure to comply with Laws and Regulations applicable to CONTRACTOR'S performance of the Work. Additionally, said review or recommendation will not impose responsibility on Architect/Engineer to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to COUNTY free and clear of any Liens.

5. Architect/Engineer may refuse to recommend the whole or any part of any payment if, in Architect/Engineer's opinion, it would be incorrect to make the representations to COUNTY. Architect/Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Architect/Engineer's opinion to protect COUNTY from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Written Amendment or Change Orders;
- c. COUNTY has been required to correct defective Work or complete Work; or

C. Payment Becomes Due

1. If approved, payment is due twenty-five business days after the payment request or invoice is stamped as received by County, Payment on a corrected payment requests, must be paid or rejected on the later of:

- a. Ten (10) business days after the date the corrected payment request or invoice is stamped as received; or
- b. If the governing body is required by ordinance, charter or other law to approve or reject the corrected payment request, the first business day after the next regularly scheduled meeting of the COUNTY held after the corrected payment request is stamped as received.

D. Reduction in Payment

1. COUNTY may refuse to make payment of the full amount recommended by Architect/Engineer because:

- a. claims have been made against COUNTY on account of CONTRACTOR'S performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to COUNTY to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling COUNTY to a set-off against the amount recommended.
 - d. if the Work is defective, or completed Work has been damaged requiring correction or replacement;
2. if the Work for which payment is requested cannot be verified;
 3. because of the failure of CONTRACTOR to make proper payments to Subcontractor for labor, materials or equipment in connection with the Work;
 4. if the Contract Price has been reduced because of Modifications or there is reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
 5. if the COUNTY has been required to correct defective Work or complete the Work in accordance with the Contract Documents;
 6. because of the CONTRACTOR'S failure to carry out the Work in accordance with the Contract Documents, or otherwise unsatisfactory prosecution of the Work;
 7. because of any other breach of, default under or violation of, or failure to comply with, the provisions of the Contract Documents.
 8. If COUNTY refuses to make payment of the full amount recommended by Architect/Engineer, COUNTY must give CONTRACTOR written notice (with a copy to Architect/Engineer) within 10 business days stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. COUNTY shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by COUNTY and CONTRACTOR, when CONTRACTOR corrects to COUNTY'S satisfaction the reasons for such action.

5.3 CONTRACTOR'S Warranty of Title. The CONTRACTOR warrants and guarantees that title to all Work covered by an Application for Payment, whether incorporated in the Work or not, shall pass to the COUNTY prior to the making of the Application for Payment, free and clear of all liens, claims, security interests, purchase money security interest, chattel paper or encumbrances of any nature whatsoever ("Liens").

5.4 The CONTRACTOR shall promptly pay all Subcontractors, laborers, materialmen, and suppliers upon receipt of payment from the COUNTY, out of the amount paid to the CONTRACTOR on account of such person's portion of the Work, the amount to which such person is entitled, reflecting percentages actually retained from payments to the CONTRACTOR

on account of such person's portion of the Work. The CONTRACTOR shall, by appropriate agreement with each Subcontractor or other person, require each subcontractor or other person to make payments to Sub-subcontractors in similar manner.

5.5 A Certificate of Payment, a progress payment, or partial or entire use of the Project by the COUNTY shall not constitute acceptance of Work not in accordance with the Contract Documents.

5.6 In accordance with the provisions of Section 255.05, Florida Statutes, where the CONTRACTOR requires a waiver from laborers, materialmen, subcontractors, or sub-subcontractors (as each such term is defined by Section 713.01, Florida Statutes) of the right to make a claim against the Payment Bond in exchange for, or to induce payment of, a progress payment or a final payment; such waivers shall comply with the form set forth in 255.05, Florida Statutes as amended from time to time.

5.7 If one or more "Notice of Non-Payment" is received by the COUNTY, no further payments will be approved until non-payment(s) have been satisfied and a "Release of Claim" for each "Notice" has been submitted to the COUNTY. Upon request, CONTRACTOR shall furnish acceptable evidence that all such claims or liens have been satisfied. If CONTRACTOR fails to satisfy the nonpayment, COUNTY may make payment and back charge CONTRACTOR for any and all costs associated with such payment.

5.8 Progress. If at any time during the progress of Work, CONTRACTOR'S actual progress is inadequate to meet the requirements of the Contract, COUNTY may, but is not required to, notify CONTRACTOR to implement some or all of the following remedial actions at the sole cost and expense of CONTRACTOR:

1. Increase construction manpower in such quantities and crafts as necessary to eliminate the schedule progress deficiency;
2. Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the schedule progress deficiency;
3. Reschedule the Work in conformance with the specification requirements.

5.9 Neither such notice by COUNTY nor COUNTY'S failure to issue such notice shall relieve CONTRACTOR of its obligation to achieve the quality of Work and rate of progress required by the Contract.

ARTICLE 6 TIME OF PERFORMANCE

6.1 Time is of the essence for each Work Order issued under this Agreement.

6.1.1 Substantial Completion

The following items, as applicable, shall be completed prior to an inspection for Substantial

Completion:

1. All general construction completed and the project components shall be clean, and all systems fully functional.
2. All mechanical and electrical Work substantially complete, fixtures in place, connected, cleaned and usable.
3. All electrical circuits shall be scheduled in panels, and all panels and disconnect switches properly labeled.
4. All painting shall be completed; all signs installed.
5. All floors, glass and metal Work shall be cleaned.
6. All finish hardware shall be installed, and all doors shall be in good Working order.
7. Project site shall be cleared of the CONTRACTOR'S excess equipment, temporary facilities, trailers, and/or building supplies. All temporary construction shall be removed, and all Sitework completed.
8. All operations and maintenance manuals for all equipment shall have been submitted.
9. Manufacturers certifications and warranties shall be delivered to COUNTY.
10. All operations and maintenance training related literature, software and back-up disks have been provided.
11. All required spare parts, materials, as well as any special measuring devices and tools shall have been provided to COUNTY.
12. All air and water balancing reports shall have been submitted.
13. All keys and blanks shall have been provided.

6.1.2 When CONTRACTOR considers the entire Work Order ready for its intended use CONTRACTOR shall notify COUNTY in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that Architect/Engineer issue a certificate of Substantial Completion. Promptly thereafter, COUNTY and CONTRACTOR, and Architect/Engineer shall make an inspection of the Work to determine the status of completion. For the purpose of this Contract, and for the compliance of those procedures, duties and obligations as set forth in Section 218.70 and Section 218.735, Florida Statutes the term "Substantial Completion" is defined as that point where COUNTY is able to enjoy beneficial occupancy of the Work and where the Work has achieved that level of completion such that COUNTY is able to utilize the entire Project for its intended purposes, including but not limited to the completion of all specified systems and items relating to life,

safety and regulatory use, with the exception of incidental or incomplete items except where a lack of completion of such incidental or incomplete items of Work will adversely affect the complete operation of other areas of the Work. Additional conditions (if any) needed to achieve Substantial Completion of the Work and which are project specific are as set forth in attached Exhibits. If COUNTY and Architect/Engineer do not consider the Work substantially complete, Architect/Engineer will notify CONTRACTOR in writing giving the reasons therefore. If Architect/Engineer considers the Work substantially complete, Architect/Engineer will prepare and deliver to COUNTY a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. If Architect/Engineer considers the Work substantially complete, then, for construction projects having an estimated cost of less than 10 million dollars:

In addition to Section 218.735, Florida Statutes, punchlist procedures to render the Work complete, satisfactory and acceptable are established as follows:

1. Within five (5) days of Substantial Completion of the construction services purchased as defined in the Contract, CONTRACTOR shall schedule a walkthrough with COUNTY (“Initial Walkthrough” a/k/a “IW”). The purpose of the IW is to develop a preliminary checklist (“Checklist”) of items to be performed by the CONTRACTOR, based upon observations made jointly between the CONTRACTOR and COUNTY during the IW. The IW is to occur within ten (10) days of Substantial Completion of the Work as defined by the Contract, again predicated upon the CONTRACTOR’S timely initiation of a request for the IW. At its option, COUNTY may conduct the IW with its Field Inspector.
2. CONTRACTOR shall endeavor to address and complete as many items as possible noted on the Checklist either during the IW itself, or thereafter for a period of fifteen (15) days from the date of the IW.
3. No later than fifteen (15) days following the scheduled IW, CONTRACTOR shall again initiate and request a second walkthrough of the Project with COUNTY. The purpose of this second walkthrough is to identify which items remain to be performed from the IW Checklist and to supplement that list as necessary (based, for example, upon work which may have been damaged as a result of the CONTRACTOR’S performance of completion of items contained on the IW Checklist) and for the purpose of developing a joint Final Punchlist.
4. The intent of this section is for COUNTY and the CONTRACTOR to cooperate to develop a Final Punchlist to be completed no later than thirty (30) days from the date of reaching Substantial Completion of the construction services purchase as defined in the Contract.
5. In no event may the CONTRACTOR request payment of final retainage under Section 718.735, Florida Statutes until the CONTRACTOR considers the Final Punchlist to be 100% complete.
6. CONTRACTOR agrees to complete the Final Punchlist items within forty-five (45) days of the date of its issuance by COUNTY.

7. CONTRACTOR acknowledges and agrees that no item contained on the Final Punchlist shall be considered a warranty item until such time as (a) the Final Punchlist is 100% complete, and (b) COUNTY has been able to operate or utilize the affected punchlist item for an additional period of fifteen (15) days.
8. CONTRACTOR acknowledges and agrees that COUNTY may, at its option, during performance of the Work and prior to Substantial Completion, issue lists of identified non-conforming or corrective work for the CONTRACTOR to address. The intent of any such COUNTY generated lists prior to Substantial Completion is to attempt to streamline the punchlist process upon achieving Substantial Completion, and to allow for the CONTRACTOR to address needed areas of corrective work as they may be observed by COUNTY during performance of the Work.
9. CONTRACTOR acknowledges and agrees that in calculating 150% of the amount which may be withheld by COUNTY as to any Final Punchlist item for which a good faith basis exists as to it being complete, as provided for by Section 218.735, Florida Statutes, COUNTY may include within such percentage calculation its total costs for completing such item of work, including its administrative costs as well as costs to address other services needed or areas of work which may be affected in order to achieve full completion of the Final Punchlist item. Such percentage shall in no event relate to the schedule of value associated with such Work activity, but rather total costs are based upon the value (i.e. cost) of completing such Work activity based upon market conditions at the time of Final Punchlist completion.

6.1.3 COUNTY shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but COUNTY shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

6.2 Partial Utilization

A. Use by COUNTY at COUNTY'S option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which COUNTY, Architect/Engineer, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by COUNTY for its intended purpose without significant interference with CONTRACTOR'S performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. COUNTY at any time may request CONTRACTOR in writing to permit COUNTY to use any such part of the Work which COUNTY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to COUNTY and Architect/Engineer that such part of the Work is substantially complete and request Architect/Engineer to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify COUNTY and Architect/Engineer in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request Architect/Engineer to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, COUNTY, CONTRACTOR, and Architect/Engineer shall make an inspection of that part of the Work to determine its status of completion. If Architect/Engineer does not consider that part

of the Work to be substantially complete, Architect/Engineer will notify COUNTY and CONTRACTOR in writing giving the reasons therefore.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with this Agreement regarding property insurance.

6.3 Final Inspection

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, Architect/Engineer will promptly 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 complete such Work or remedy such deficiencies.

6.4 Final Payment

A. Application for Payment

1. After CONTRACTOR has, in the opinion of Architect/Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents, and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments and §218.70 et. seq., Fla.Stat.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to COUNTY) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens and as approved by COUNTY, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which COUNTY or COUNTY'S property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to COUNTY to indemnify COUNTY against any Lien.

B. Review of Application and Acceptance

1. If, on the basis of Architect/Engineer's observation of the Work during construction and final inspection, and Architect/Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Architect/Engineer is satisfied that the Work has been completed and CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, Architect/Engineer will, within ten days after receipt of

the final Application for Payment, indicate in writing Architect/Engineer's recommendation of payment and present the Application for Payment to COUNTY for payment. At the same time Architect/Engineer will also give written notice to COUNTY and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, Architect/Engineer will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Upon completion of all items on the punchlist, final payment is due twenty-five business days after the payment request or invoice is stamped as received by County, Payment on a corrected payment requests, must be paid or rejected on the later of:

- a. Ten (10) business days after the date the corrected payment request or invoice is stamped as received; or
- b. If the governing body is required by ordinance, charter or other law to approve or reject the corrected payment request, the first business day after the next regularly scheduled meeting of the COUNTY held after the corrected payment request is stamped as received.

If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to the contract, the COUNTY may continue to withhold an amount not to exceed 150 percent of the total costs to complete such items.

6.5 If Substantial Completion is not obtained at the inspection called by the CONTRACTOR, for reasons that are the fault of the CONTRACTOR, the cost of any subsequent inspections requested by the CONTRACTOR for the purpose of determining Substantial Completion shall be at the cost of the CONTRACTOR and shall be assessed against the final payment application. Punch list items recorded as a result of inspections for Substantial Completion are to be corrected by the CONTRACTOR within the time-frame established.

**ARTICLE 7
LIQUIDATED DAMAGES**

7.1 Milestones, milestone completion dates and applicable liquidated damages shall be in accordance with the Work Order.

7.2 If the milestones are not strictly complied with, then Liquidated damages will be assessed against the CONTRACTOR, which are agreed upon in the Work Order, and it is further agreed that such Liquidated Damages bear a reasonable relationship to damages to be incurred by COUNTY, and are not a penalty.

ARTICLE 8
CLAIMS FOR ADDITIONAL TIME

8.1 If the CONTRACTOR'S performance of this Contract is delayed: i) which delay is beyond the reasonable control and without the fault or negligence of the CONTRACTOR or its subcontractors; or ii) by changes ordered in the Work, and in either event where such delay or change in the Work affects the critical path, then the Contract Time shall be extended by Change Order as determined by the COUNTY . If the CONTRACTOR wishes to make Claim for an increase in the Contract Time, CONTRACTOR shall provide COUNTY a written notice of claim upon discovering the cause of the alleged delay. Such notice of claim shall include the following information, or else be waived:

1. Nature of the delay or change in the Work;
2. Dates of commencement and cessation of the delay or change in the Work;
3. Activities on the current progress schedule affected by the delay or change in the Work;
4. Identification and demonstration that the delay or change in Work affects the critical path;
5. Identification of the source of delay or change in the Work;
6. Anticipated extent of the delay or change in the Work; and
7. Recommended action to minimize the delay.

8.2 The CONTRACTOR shall not be entitled to any extension of time for delays resulting from any cause unless CONTRACTOR shall have notified the COUNTY in writing within seven (7) calendar days of commencement of the delay.

8.3 No Damages for Delay; Exclusive Remedy. The CONTRACTOR shall not be entitled to and hereby waive any and all claims for damages which they may suffer by reason of delay, acceleration, loss of efficiency, or other related time or impact-based claims (hereinafter collectively "delay") or for delay attributable to any foreseen or unforeseen condition, or for delays claimed to be the result of active, intentional, knowing or passive interference by the COUNTY , Architect, Architect/Engineer, or its agents, and waives damages which it may suffer by reason of such claims for lost profits, loss or impairment of bonding capacity, destruction of business, extended overhead, supervision, extended, unabsorbed home office overhead; the extension of time granted herein being the CONTRACTOR'S sole remedy, with the exception that in the event of demonstrated critical, compensable, non-concurrent delay suffered by the CONTRACTOR, the CONTRACTOR may claim as its sole and exclusive remedy any associated, extended direct jobsite general conditions expended by the CONTRACTOR (hereinafter "applicable extended general conditions") in a sum not to exceed \$250.00 per each day of delay. Apart from extensions of time or acceleration costs approved by COUNTY and any applicable extended general conditions, no payment of claim for delay damages shall be

made to the CONTRACTOR as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work, whether such delay be avoidable or unavoidable. Notwithstanding anything herein to the contrary, provided CONTRACTOR have otherwise satisfied the requirements of this Contract, the CONTRACTOR shall be entitled to an increase in the Contract sum based upon approved general condition, insurance, and bond premium costs resulting from delays for which the Architect/Engineer has approved by Change Order. an extension of time for performance; provided, however, COUNTY shall not be required to pay such additional amounts for any days following the date on which CONTRACTOR achieves Final Completion for the appropriate portion of the Work.

ARTICLE 9 SITE CONDITIONS

9.1 Field Measurements. Before undertaking each part of the construction, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to the COUNTY any conflict, error or discrepancy which CONTRACTOR or any of its Subcontractors or Suppliers may discover and shall obtain a written interpretation or clarification from COUNTY before proceeding with any Work affected. CONTRACTOR shall remain liable to COUNTY for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents prepared by CONTRACTOR.

9.2 Differing Site Conditions. The CONTRACTOR shall promptly, and before such conditions are disturbed, notify the COUNTY in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or (2) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract. The COUNTY will promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in the CONTRACTOR'S cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. CONTRACTOR'S failure to provide notice upon discovery of the differing site condition shall waive any entitlement to such an adjustment in the Contract Price or Contract Time.

ARTICLE 10 INDEMNIFICATION

The CONTRACTOR hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether employees of any tier of the CONTRACTOR, its SUBCONTRACTS, CONSULTANTS or SUPPLIERS or otherwise, and to all property caused by, resulting from, arising out of or occurring in connection with the execution of the Contract, or in preparation for the work and services under this Contract, or any extension, modification, or amendment thereto by change order to otherwise.

CONTRACTOR hereby agrees to indemnify and hold harmless MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS, its officers and employees from liabilities, damages, lawsuits, and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the CONTRACTOR or persons employed or utilized by the CONTRACTOR in the performance of the Construction Contract.

ARTICLE 11 TERMINATION

11.1 Notwithstanding any other provision of this Contract, the CONTRACTOR may be held in default of its contractual obligation under this Contract if the CONTRACTOR:

1. refuses or fails to supply enough properly skilled workers or proper and sufficient materials and equipment;
2. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the CONTRACTOR and the Subcontractors;
3. disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
4. performs Work that does not conform to Work Order requirements;
5. fails to meet the Work Order schedule or fails to make progress on the Work so as to endanger performance of the Work Order;
6. abandons or refuses to proceed with any or all Work; or
7. otherwise breaches, fails to comply fully with, or is in default of any provision of the Contract Documents or Work Order.

11.2 The COUNTY must provide written notice to the CONTRACTOR notifying it that the COUNTY is declaring it in default and providing the CONTRACTOR with three (3) business days after receipt of such written notice of default, to cure such default. In the event that the CONTRACTOR fails to cure the default within the three (3) day default period, the COUNTY may:

1. take possession of the Work site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the CONTRACTOR;
2. accept assignment of subcontracts pursuant to this Agreement; and
3. finish the Work by whatever reasonable method the COUNTY may deem expedient, and charge all completion costs against any monies owed or to be owed to CONTRACTOR, or back charge CONTRACTOR for any and all such completion costs, or
4. terminate the CONTRACTOR and hire a completion CONTRACTOR to finish the Work by whatever reasonable method the COUNTY may deem expedient, and charge all completion costs, including costs for construction, architectural, engineering, project management, and any other expenses, against any monies owed or to be owed to CONTRACTOR, or back charge CONTRACTOR for any and all such completion costs, or
5. set off any and all such completion costs against any monies then due or to

become due on any other projects that the COUNTY has with CONTRACTOR.

11.3 Upon default, CONTRACTOR shall not be entitled to receive further payment until the Work is finished.

11.4 If, after notice of termination, it is determined for any reason that the CONTRACTOR was not in default, or that the delay was excusable under the provisions of the Contract Documents, the rights and obligations of the parties shall be the same as if the notice of termination had been a Termination by the COUNTY for Convenience.

11.5 Termination by the COUNTY for Convenience. Notwithstanding any other provision to the contrary in the Contract Documents, the COUNTY reserves the right at any time and in its sole and absolute discretion to terminate the services of the CONTRACTOR with respect to the Work by giving written notice to the CONTRACTOR. In such event, the CONTRACTOR shall be entitled to, and the COUNTY shall reimburse the CONTRACTOR for, an equitable portion of the Contract Price based on the portion of the Work completed prior to the effective date of termination and for any other reasonably expended costs attributable to such termination. However, CONTRACTOR shall not be entitled to receive its anticipated profits for any unperformed Work.

11.6 Should the CONTRACTOR'S Contract be terminated for any reason, the CONTRACTOR shall, at no additional cost to the COUNTY, give written permission to the COUNTY to utilize all design documents necessary for the purpose of completing the Project with another CONTRACTOR.

ARTICLE 12 SUSPENSION OF WORK

The COUNTY may, without cause, order the CONTRACTOR in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the COUNTY may determine.

ARTICLE 13 CHANGES IN THE WORK

13.1 The COUNTY may, at any time or from time to time, order additions, deletions or revisions in the Work. Upon request of the COUNTY, a request for proposal will be issued to the CONTRACTOR detailing the proposed additions, deletions or revisions to the Work. The request for proposal shall include such details as man-hours, man-hour rates, quantities, quantity unit rates, equipment, equipment unit rates and mark-ups. The CONTRACTOR shall complete and return the request for proposal to the COUNTY within ten (10) calendar days from receipt thereof. The request for proposal shall include any increases or decreases in Contract Time or Contract Price and shall include any additional modifications required by virtue of the requested change, whether or not such additional modifications were specifically identified in the request for proposal. The request for proposal may then be: 1) issued as a Change Order in accordance with the provisions of the Contract Documents; 2) modified and thereafter issued as a Change Order in accordance with the provisions of the Contract Documents; or 3) withdrawn.

13.2 The COUNTY may authorize minor changes or alterations in the Work not involving

extra cost or time and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order. If the CONTRACTOR believes that any minor change or alterations authorized by the COUNTY entitles it to an increase in the Contract Price or extension of Contract Time, it shall treat the Field Order as a request for proposal and issue a proposal for the changes in Contract Price and Contract Time prior to proceeding with the Work covered in the Field Order. The procedures outlined in the Contract Documents shall then be followed. Acceptance of the Final Payment by the CONTRACTOR shall constitute acknowledgment by the CONTRACTOR that all payments due for modifications required under Field Orders have been incorporated into the Final Payment.

13.3 Additional Work performed by the CONTRACTOR without authorization of a written Change Order will not entitle it to an increase in the Contract Price or an extension of the Contract Time.

13.4 It is the CONTRACTOR'S responsibility to notify its Surety of any changes affecting the general scope of the Work or change in the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly. The CONTRACTOR shall furnish proof of such adjustment to the COUNTY.

13.5 The COUNTY may, at any time, without notice to the Surety, by Field Order or by properly executed Change Order, make any change in the Work within the general scope of the Contract Documents, including but not limited to changes:

- A. in the Drawings and designs, and Specifications;
- B. in the method or manner of performance of the Work;
- C. in the COUNTY -furnished facilities, equipment, materials, services or site; or
- D. directing acceleration in the performance of the Work.

13.6 Except as herein provided, no order, statement, or conduct of the COUNTY shall be treated as a Change Order or Field Order or entitle the CONTRACTOR to an equitable adjustment hereunder.

13.7 No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

13.8 The value of any additional Work or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways at the sole discretion of the COUNTY:

- A. where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved;
- B. by negotiated lump sum; or
- C. cost plus. If this option is selected, COUNTY reserves the right to request any and all documentation from CONTRACTOR in support of its foregoing actual costs, and CONTRACTOR agrees promptly to supply such information.

13.9 For changes in the Work performed by CONTRACTOR's own forces, CONTRACTOR

shall be entitled to a percentage mark-up for actual costs as defined in Section 1 of ten (10) percent.

13.10 For changes in the Work performed by subcontractors, (a) the subcontractor shall be entitled to mark-up the cost of the change(s) by ten (10) percent, and (b) the CONTRACTOR shall be entitled to mark-up the subcontractor's total by five (5) percent. The foregoing shall be the maximum amount allowable for subcontractor's and CONTRACTORs actual costs as defined in Section 1.

ARTICLE 14 MATERIALS, EQUIPMENT AND WORKMANSHIP; SUBSTITUTIONS

14.1 Only new, unused items of recent manufacture, of designated quality, free from defects, will be accepted. Rejected items shall be removed immediately from the Work and replaced with items of specified quality. Failure by COUNTY to order removal of rejected materials and equipment shall not relieve CONTRACTOR from responsibility for quality of the materials supplied nor from any other obligation under the Contract Documents.

14.2 No Work defective in construction or quality, or deficient in meeting any requirement of the Contract Drawings and Specifications will be acceptable regardless of COUNTY'S failure to discover or to point out defects or deficiencies during construction; nor will the presence of field representatives at the Work or the satisfaction of the WORK meeting applicable code requirements relieve CONTRACTOR from responsibility for the quality and securing progress of Work as required by the Contract Documents.

14.3 Prior to proposing any substitute item, CONTRACTOR shall satisfy itself that the item proposed is, in fact, equal or better to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, and that by reason of cost savings, reduced construction time, or similar demonstrable benefit, the substitution of such item will be in COUNTY'S interest, and will in no way have a detrimental effect upon the Project completion date and schedule.

14.3.1 The burden of proof of equality of a proposed substitution for a specified item shall be upon CONTRACTOR. CONTRACTOR shall support its request with sufficient test data and other means to permit COUNTY to make a fair and equitable decision on the merits of the proposal. CONTRACTOR shall submit drawings, samples, data and certificates and additional information as may be required by the COUNTY for proposed substitute items as required by the Contract Documents.

14.3.2 Any item by a manufacturer other than those specified or of brand name or model number or of generic species other than those specified will be considered a substitution. COUNTY will be the sole judge of whether or not the substitution is equal in quality, utility and economy to that specified.

14.3.3 CONTRACTOR shall allow an additional 15 calendar days for COUNTY'S review of substitutions. All requests for substitutions with submittal data must be made at least fifty (50) calendar days prior to the time CONTRACTOR must order, purchase or release for manufacture

or fabrication. Approval of a substitution shall not relieve CONTRACTOR from responsibility for compliance with all requirements of the Contract. CONTRACTOR shall coordinate the change with all trades and bear the expense for any changes in other parts of the Work caused by any substitutions.

14.3.4 If COUNTY rejects CONTRACTOR'S substitute item on the first submittal, CONTRACTOR may make only one additional request for substitution in the same category. Upon the second request, the CONTRACTOR shall be invoiced the expenses of the COUNTY allocable to the review of such submittal data. The foregoing amounts shall be deducted, as applicable, from the next succeeding partial payment to the CONTRACTOR, or from the final payment.

ARTICLE 15 COMPLIANCE

15.1 All work, labor, materials and equipment provided under each Work order shall be performed in strict compliance with any and all applicable building and fire, life and safety codes and strictly in accordance with plans and specifications. CONTRACTOR must satisfy itself that the Plans, Drawings and Specifications in fact comply with all applicable codes. CONTRACTOR shall notify COUNTY prior to commencement of Work of any requirement of the plans and specifications not in strict compliance with such codes. There will be no extra payment for compliance to existing codes or any item of interpretation regarding enforcement of existing codes. CONTRACTOR is representing by acceptance of this Agreement that it has thoroughly researched all applicable codes and regulations affecting this Project.

15.2 If, during the term of this Contract, there are any changed or new laws, ordinances or regulations not known or foreseeable at the time of signing this Contract which become effective and which affect the cost or time of performance of the Contract, CONTRACTOR shall immediately notify COUNTY in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Contract. Upon concurrence by COUNTY as to the effect of such changes, an adjustment in the Contract Price and/or time of performance will be made. If any discrepancy or inconsistency should be discovered between the Contract Documents and any law, ordinance, regulation, order or decree, CONTRACTOR shall immediately report the same in writing to COUNTY who will issue such instructions as may be necessary. However, it shall not be grounds for a Change Order that the CONTRACTOR was unaware of or failed to investigate the rules, codes, regulations, statutes, and all ordinances of all applicable governmental agencies having jurisdiction over the Project or the Work.

15.3 CONTRACTOR shall give all notices and at all times comply with all applicable laws, codes, ordinances, rules and regulations in effect during the time of performance of the Work.

15.4 CONTRACTOR shall deliver a product which will meet or exceed the Design Criteria package standards, provide a complete and functional facility including but not limited to all necessary interfaces between this facility and adjacent existing facilities, and/or anticipated future facilities. All built-in equipment, systems, controls, devices and finishes necessary for the efficient use and maintenance of the facility and its related site work, except as otherwise noted and/or clarified herein, shall be included in the Work.

**ARTICLE 16
NON-DISCRIMINATION**

CONTRACTOR covenants and agrees that the CONTRACTOR shall not discriminate against any employee or applicant for employment to be employed in the performance of the Agreement with the respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, physical handicaps (except where based on a bona fide occupational qualification) marital status, race, color, religion, national origin or ancestry.

**ARTICLE 17
DEFECTIVE WORK**

17.1 Rejecting Defective Work. The COUNTY shall 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 conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to final acceptance). Such parties shall also have authority to require special inspection or testing of the Work as such parties may individually or severally deem necessary, whether or not the Work is fabricated, installed or completed.

17.2 Correction of Defective Work. Upon presentation of a Defective Work Notice to the CONTRACTOR or CONTRACTOR'S Project Superintendent, the CONTRACTOR shall meet within twenty-four (24) hours with the COUNTY, and, at the sole option of COUNTY, the COUNTY'S representative, to discuss a work plan and time-line to correct the defective Work. The CONTRACTOR shall have no more than five (5) working days to begin corrective action and repairs in accordance with the agreed upon schedule; provided, however, all repairs to natural gas, telephone, radio, computer security, water, waste water, electric air conditioning services and all emergency services shall be commenced within twelve (12) hours of notification, or by 7:00 a.m. whichever is earlier, and CONTRACTOR shall complete the repairs in an expeditious manner befitting the nature of the deficiency. If the CONTRACTOR refuses to comply with the twenty four (24) hour meeting requirement, or the agreed upon correction schedule, the COUNTY has the right to do any of the following: (1) correct any Work so performed by the CONTRACTOR and deduct the expenses for doing so from the final payment due the CONTRACTOR, or (2) hold back final payment due CONTRACTOR until such time as the Work is completed to the satisfaction of the COUNTY and in compliance with the Contract Documents. The COUNTY shall have the sole discretion to determine if the Work is satisfactory and in compliance with Contract Documents. The foregoing remedies are not exclusive and the COUNTY reserves the right to pursue any and all other remedies it deems applicable.

**ARTICLE 18
BONDS AND INSURANCE**

18.1 Payment and Performance Bonds. The CONTRACTOR shall, upon execution and return of this Agreement to the COUNTY, furnish a Public Payment Bond and a Performance Bond, and record that Bond with the Clerk of the Circuit Court's office, pursuant to Section 255.05, Florida Statutes, in at least an amount equal to the Contract Price for any Work Order valued at

\$200,000.00 or greater, covering the faithful performance of this Agreement and all CONTRACTOR'S faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. The Surety must be included in the most recent United States Department of the Treasury List of Acceptable Sureties, authorized to issue surety bonds in Florida, and which maintains a surety rating of "A-" or better. A complete copy of the fully executed Payment Bond shall be posted in a conspicuous place at the Project site. If the Surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its authorization to do business in the State of Florida is terminated or it ceases to be listed on the United States Department of Treasury List of Acceptable Sureties, or its surety rating ceases to be an "A-" or better, CONTRACTOR shall within five (5) days thereafter substitute another Payment Bond, Performance Bond, and Surety, each of which shall be in accordance with the Contract Documents and acceptable to COUNTY . An action to enforce any claim against a payment bond must be brought within one year from the last furnishing of labor, services, or materials, or as otherwise stated in Section 95.11, Florida Statutes. An action to enforce any claim against a performance bond must be brought within five years in accordance with Section 95.11, Florida Statutes, and applicable case law.

18.2 Insurance

18.2.1. Certificate of Insurance. One (1) certified true copy of the policy/policies must be furnished by CONTRACTOR to COUNTY prior to commencement of any Work Order including demolition, site work, site preparation or construction Work. The Certificate(s) of Insurance must indicate Martin County Board of County Commissioners as additional insureds on all policies. The statement "Additional Insureds" is to be listed in the Description Block of the Insurance Certificate. The indication that Martin County Board of County Commissioners is a Certificate Holder is not sufficient for this issue. The insurance certificate must indicate the Project name and all other requirements set forth in Section 18 and the sample Accord Certificate of Insurance provided.

18.2.2. General Insurance Requirements

a. CONTRACTOR and, where designated, each of its subconsultants, Professionals, and subcontractors shall obtain and maintain during the full duration of Work required under this AGREEMENT, and through any period of limitation allowed by law for actions for personal injury, bodily injury, disease, death, property damages and other losses or damages required to be insured hereunder, the following insurance coverages, in the type, amounts, terms and in conformance with the following minimum requirements.

b. All policies and endorsements shall be issued on Insurance Service Office (ISO) forms or on forms providing broader and no less restrictive coverage. Notwithstanding the foregoing, the form and content of all policies and endorsements must be acceptable to the COUNTY.

c. The policy(s) shall provide for 30 Days prior written notice to the COUNTY, by registered or certified mail, if cancellation or any change that will reduce the coverages required herein.

d. The policy(s) shall be written for the estimated construction Work, commencing with the initial demolition, Site Work and/or Site preparation and ending at the Final Completion date, and shall contain an endorsement providing for extension of the policy(s) for up to two (2) years. The Products and Completed Operations portions of the General Liability shall extend for a period of two years after the Final Acceptance of the Project by the COUNTY .

e. All liability polices required herein shall be written on an occurrence basis.

f. The policies shall name the COUNTY , its commissioners and staff as additional insureds as their interest may appear under this Agreement.

g. All insurers shall agree to waive all rights of subrogation against the COUNTY and each individual member of the Board of County Commissioners, Constitutional Officers or staff.

18.2.3. Premiums. The CONTRACTOR shall be solely responsible for payment of all premiums for insurance required under this Agreement and shall be solely responsible for the payment of all deductibles to which such policies are subject.

18.2.4. Specific Insurance Limits are as follows:

a. Workers' Compensation - The CONTRACTOR shall carry Workers' Compensation insurance on behalf of all employees who are required to provide a service under this Agreement, as required by Section 440, Florida Statutes and Employers Liability of limits no less than:

\$500,000	each accident
\$500,000	disease - policy limit
\$500,000	each employee

b. Commercial General Liability - including but not limited to bodily injury, \$2,000,000 per location aggregate covering all Work performed under this Agreement. The insurance shall include all major divisions of coverage and shall be on a comprehensive general basis including Premises and Operations (including X-C-U), COUNTY's and CONTRACTORS Protective, Products and Completed Operations.

c. Automobile Liability - including bodily injury and property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less than Agreement.

d. Umbrella Liability - to include the Employers Liability, general liability and automobile in underlying policy schedule, with limits of not less than \$1,000,000.

e. Hazardous Material - if the Work being performed involves hazardous materials, the need to procure appropriate insurance coverage will be addressed in a contract modification. However, if hazardous materials are identified while carrying out this Agreement, no further Work is to be performed in the area of the hazardous material until the COUNTY has been consulted as to the need to procure and maintain such coverage.

g. Property Insurance/Builders Risk (if applicable) – CONTRACTOR shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations).

This insurance shall:

1. include the interests of COUNTY, CONTRACTOR, subcontractors, Architect/Engineer, Architect/Engineer’s consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder’s Risk “all-risk” or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by COUNTY prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Architect/Engineer;

5. allow for partial utilization of the Work by COUNTY ;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by COUNTY, CONTRACTOR, and Architect/Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

8. The COUNTY and CONTRACTOR waive all rights against each other and any of their subcontractors, agents and employees and the Architect/Engineer, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to Work, except as to proceeds of such insurance held by CONTRACTOR as fiduciary.

18.2.5 Waiver of Subrogation. CONTRACTOR hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of

Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.

ARTICLE 19 PERFORMANCE GUARANTEE AND WARRANTY

19.1 All materials and equipment incorporated into any Work Order shall be warranted and guaranteed as new quality, and of the highest grade of quality for their intended use, and all Work shall be performed in good workmanship and shall be in accordance with all plans and specifications and industry standards. The Work shall be functionally sound, technically proficient, developed with structural integrity, shall exhibit high quality architectural principles, and shall be in compliance with all governing laws, regulations, applicable building codes, hurricane design, and applicable Florida Building Code. CONTRACTOR warrants all Work against defects for a period of one year (unless longer guarantees or warranties are provided for elsewhere in the Contract or at law in which case the longer periods of time shall prevail) from the date of Substantial Completion, regardless of whether the Work was performed by CONTRACTOR or any of its subcontractors.

19.2 CONTRACTOR shall repair or replace the defective Work and cure such defect within 48 hours of receipt of written notice. CONTRACTOR warrants such repaired or replaced Work for a period of one (1) year from the completion of the warranty work or the warranty period specified, whichever is longer. Should CONTRACTOR fail to timely cure such defects, COUNTY may proceed to performed the work at CONTRACTOR'S expense and may backcharge CONTRACTOR for all costs associated with the work.

19.3 CONTRACTOR agrees to require that all of its subcontractors, suppliers and materialmen provide warranties in their agreements at least sufficient to satisfy CONTRACTOR'S obligations in this Agreement; and CONTRACTOR shall assign all such warranties to the COUNTY as a condition precedent to the receipt of final payment. CONTRACTOR agrees to defend and indemnify COUNTY against all fees and costs should CONTRACTOR fail to obtain the warranty protections required herein.

19.4 For all equipment that has a manufacturer's warranty, the CONTRACTOR shall assign such warranty to the COUNTY. The manufacturer's warranty period shall be concurrent with the CONTRACTOR'S warranty to the COUNTY. In the event that the equipment manufacturer or supplier is unwilling to provide such a warranty, the CONTRACTOR shall obtain a 2-year equipment warranty commencing at the time of acceptance of the equipment by the COUNTY.

ARTICLE 20 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

20.1 Documents and Samples at the Site. From and after commencement of the Construction Work, the CONTRACTOR shall maintain at the site one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Design Phase and Construction Phase. In addition, the CONTRACTOR shall maintain at the site approved shop drawings, product data, samples and similar required submittals. These shall be provided to COUNTY upon completion of the Work.

20.2 Shop Drawings, Product Data and Samples.

20.3 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the CONTRACTOR proposes to conform the construction to the Contract Documents.

20.4 The CONTRACTOR shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. Design Criteria Professional shall review Shop Drawings, Product Data, Samples and similar submittals for compliance with the Design Criteria Documents and shall provide comments, if any, within fifteen (15) days of receiving such documents.

20.5 Responsibility. The CONTRACTOR shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by COUNTY'S approval of Shop Drawings, Product Data, Samples or similar submittals unless the CONTRACTOR has specifically informed COUNTY of such deviation at the time of the submittal and COUNTY has given written approval to the specific deviation. The CONTRACTOR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by COUNTY'S approval thereof.

ARTICLE 21 SAFETY

21.1 The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The CONTRACTOR shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the COUNTY and Users who may be affected thereby. The CONTRACTOR shall set forth in writing its safety precautions and programs in connection with the Work and submit the same to the COUNTY for review. The COUNTY may, but shall not be obligated to, make suggestions and recommendations to the CONTRACTOR with respect thereto.

21.2 All Work, whether performed by the CONTRACTOR, its subcontractor or sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliance, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to:

1. all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970 and the Trench Safety Act, as amended and all state, Martin County and, where the Project is located in a municipality, municipal, rules and regulations now or hereinafter in effect; and

2. all codes, rules, regulations and requirements of the COUNTY and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall

govern.

21.3 Should the CONTRACTOR fail to provide a safe area for the performance of the Work or any portion thereof, the COUNTY shall have the right, but not the obligation, to suspend Work in the unsafe area. All costs of any nature resulting from the suspension, by whomsoever incurred, shall be borne by the CONTRACTOR.

21.4 The CONTRACTOR shall provide, or cause to be provided, to each worker on the Work site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Work site who fails or refuses to use the same. The COUNTY shall have the right, but not the obligation, to order the CONTRACTOR to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices, with which order the CONTRACTOR shall promptly comply.

21.5 Emergencies. In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the COUNTY, is obligated to act, at its discretion, to prevent threatened damage, injury or loss. If the 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 Price or an extension of the Contract Time, it may make a claim therefore as provided in the Contract Documents.

ARTICLE 22 PROTECTION OF WORK AND PROPERTY

22.1 CONTRACTOR shall, throughout the performance of the Contract, maintain adequate and continuous protection of all completed Work and temporary facilities against loss or damage from whatever cause, shall protect the property of the COUNTY and third parties from loss or damage from whatever cause arising out of the performance of the Contract and shall comply with the requirements of the COUNTY and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to the property. COUNTY, its insurance carriers, or representatives may, but shall not be required to, make periodic patrols of the Work site as a part of its normal safety, loss control and security programs. In such event, however, the CONTRACTOR shall not be relieved of its aforesaid responsibilities and the COUNTY shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the CONTRACTOR by this Contract.

22.2 Before the CONTRACTOR disposes of any existing improvements or equipment which are to be removed as a portion of the Work, and for which disposition is not specifically provided for elsewhere in the Contract Documents, CONTRACTOR shall contact the COUNTY and determine if the removal items are to be salvaged. Items to be salvaged by the COUNTY shall be neatly stockpiled or stored in a neat and acceptable manner at the construction site easily accessible to the COUNTY. Equipment and materials which will not be salvaged by the COUNTY shall become the property of the CONTRACTOR to be removed from the site and disposed of in an acceptable manner. To the extent CONTRACTOR intends to temporarily store materials at a site near or adjacent to the Project site prior to ultimate removal or disposal, CONTRACTOR must first obtain written authorization from the COUNTY, as well as, the property owner.

22.3 Preservation of Trees. Those trees which are designated on the Drawings for preservation shall be carefully protected from damage. The CONTRACTOR shall erect and maintain such protections such as barricades, guards, and enclosures as is necessary for the protection of the trees during all construction operations. CONTRACTOR shall replace any and all trees damaged during construction activities (other than trees specified to be removed) at no expense to the COUNTY.

22.4 Preservation of Private Property. The CONTRACTOR shall exercise extreme care to avoid unnecessary disturbance of private property as applicable. Trees, shrubbery, gardens, lawn and other landscaping that must be removed shall be replaced and replanted to restore the construction easement to the condition existing prior to construction. All soil preparation procedures and replanting operations shall be under the supervision of a nurseryman experienced in such operations. Any vegetation requiring relocation, temporary or otherwise, which is damaged or destroyed, shall be replaced at no cost to the COUNTY. CONTRACTOR shall replace any and all such vegetation damaged during construction activities (other than vegetation specified to be removed) at no expense to the COUNTY.

22.5 Until final acceptance of the Work by the COUNTY pursuant to this Contract, the CONTRACTOR shall have full and complete charge and care of and, except as otherwise provided in this subparagraph, shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (specifically including COUNTY -furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) from any cause whatsoever.

22.6 Manholes, fire alarms, etc., shall not be obstructed by CONTRACTOR. CONTRACTOR is to make no connections to or operate valves on water mains or otherwise interfere with the operation of the water system, without first giving written approval from the appropriate governmental entity.

ARTICLE 23 UTILITY COORDINATION

23.1 The CONTRACTOR shall be responsible for making all necessary arrangements with governmental departments, public utilities, public carriers, service companies and corporations owning or controlling roadways, railways, water, sewer, gas, electrical, cable television, telephone, and telegraph facilities such as pavements, tracks, piping, wires, cables, conduits, poles, guys, etc., including incidental structures connected therewith, that are encountered in the Work in order that such items may be properly shored, supported and protected, or the CONTRACTOR shall be solely responsible for coordinating their relocation. The CONTRACTOR shall give all proper notices, shall comply with requirements of such parties in the performance of its Work, shall permit entrance of such parties on the Work site in order that they may perform their necessary Work, and shall pay all charges and fees made by such parties for this Work. The CONTRACTOR'S attention is called to the fact that there may be delays on the Project due to Work to be done by governmental departments, public utilities, and others in repairing or moving poles, conduits, etc. The CONTRACTOR shall cooperate with the above parties, in every way possible, so that the construction can be completed in the least possible time.

23.2 At all points where the Work constructed by CONTRACTOR connects to existing utilities and services, the actual Work of making the necessary connection to the existing service or utility shall be arranged for by CONTRACTOR at no expense to COUNTY (unless specifically indicated otherwise). Services and utilities included within (but not limited to) this responsibility are roads, ditches, electrical, sewer, mechanical utilities, water, fencing, etc. Connections shall be made at a time that will result in the least possible interference with existing services.

ARTICLE 24 HAZARDOUS MATERIALS

CONTRACTOR shall obtain all required Federal, State and local permits and licenses and shall be responsible for the safe and proper handling, transporting, storage and use of any explosive or hazardous materials brought onto or encountered within the site, and at its expense, make good any damage caused by its handling, transporting, storage and use. The CONTRACTOR will notify the COUNTY immediately if explosive or hazardous materials are encountered on the Project site. Transporting explosive or hazardous materials onto the site will require prior written approval from the COUNTY. CONTRACTOR shall maintain and post as necessary Material Hazard Data Sheets for all applicable Hazardous Materials used in the course of its work. In the event that hazardous material is improperly handled or stored by the CONTRACTOR, its subcontractors, any sub-subcontractors, or any employee or agent of any of the aforementioned which results in contamination of the site, CONTRACTOR shall immediately notify the COUNTY and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination at the CONTRACTOR'S sole cost and expense.

ARTICLE 25 AUDIT

The CONTRACTOR agrees that the COUNTY, or any of its duly authorized representatives shall have access to and the right to examine any and all books, documents, papers, and records of the CONTRACTOR, and may at its option conduct an audit of the CONTRACTOR'S financial books and records concerning this Project. The CONTRACTOR agrees that payment(s) made under this Agreement shall be subject to reduction for amounts charged thereto which are found on the basis of audit examination to constitute non-allowable costs under this Agreement. The CONTRACTOR shall promptly refund by check payable to the COUNTY the amount of such reduction of payments. All required records shall be maintained until the later of an audit is completed and all questions arising therefore are resolved, or six (6) years after completion of the Work and issuance of the final completion certificate.

ARTICLE 26 PUBLIC RECORDS

The CONTRACTOR shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law) in connection with this Agreement and shall provide access to public records in accordance with Section 119.0701, Florida Statutes.

**ARTICLE 27
ASSIGNMENT**

27.1 CONTRACTOR shall not assign, transfer, convey or otherwise dispose of the contract or its right, title or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous written consent of the COUNTY and SURETIES.

27.2 If for any reason the COUNTY terminates its agreement with the CONTRACTOR, the CONTRACTOR hereby assigns this Agreement to the COUNTY. CONTRACTOR shall include in each of its subcontracts language that requires its Subcontractors to agree to such assignment and to perform their responsibilities and to fully complete the work required by this Contract directly for the COUNTY.

**ARTICLE 28
ATTORNEY'S FEES AND COSTS**

28.1 In the event the CONTRACTOR defaults in the performance of any of the terms, covenants and conditions of this Agreement, the CONTRACTOR agrees to pay all damages and costs incurred by the COUNTY in the enforcement of this Agreement, including reasonable attorney's fees, expert fees, court costs and all expenses, even if not taxable as court costs, including, at the State Court, Appellate Court and in Bankruptcy Proceedings.

28.2 In cases other than outlined in Section 28.1, the parties expressly agree that each party will bear its own attorney's fees incurred in connection with this Agreement.

**ARTICLE 29
NOTICES**

All notices under this Agreement shall be in writing and shall be (as elected by the person giving such notice) mailed solely by Certified Mail, Return Receipt Requested, Hand Delivery with Proof of Service, or by Overnight Courier to the COUNTY and CONTRACTOR at the addresses listed on page one of this Agreement. Either party may change its address, for the purposes of this Section, by 30 day prior written notice to the other party given in accordance with the provisions of this Section.

**ARTICLE 30
RESOLUTION OF CLAIMS AND DISPUTES**

30.1 Mediation. As a condition precedent to the filing any legal proceedings, the parties shall endeavor to resolve claim disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The party shall, by mutual agreement, select a mediator within 15 days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the COUNTY shall select the mediator, who, if selected solely by the COUNTY, shall be a mediator certified by the Supreme Court of Florida. The mediator's fee shall be paid in equal shares by each party to the mediator

30.2 Non-jury trial. The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this Agreement.

30.3 The parties expressly and specifically hereby waive all tort claims and limit their remedies to breach of contract as to any issue in any way connected with this Agreement.

**ARTICLE 31
MISCELLANEOUS**

31.1 Taxes. The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The CONTRACTOR shall not be exempt from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONTRACTOR authorized to use the COUNTY'S Tax Exemption Number in securing such materials. The CONTRACTOR shall be responsible for payment of all federal, state, and local taxes and fees applicable to the Work and same shall be included in the Contract Price.

31.2 Pledge of Credit. The CONTRACTOR shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any Agreement, debt, obligation, judgment, lien or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of the Agreement.

31.3 Remedies and Choice of Law. This Contract is to be governed by the law of the state in which the Project is located. Venue for any lawsuit to enforce the terms and obligations of this Contract shall lie exclusively in Martin County, Florida.

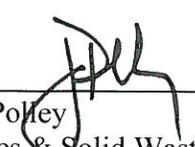
31.4 Entirety of Agreement. All prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein are merged into this Agreement. No modification, amendment or alteration of this Agreement may be made unless made in writing pursuant to the terms of this Agreement.

31.5 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, then the remaining provisions survive and are fully binding and enforceable.

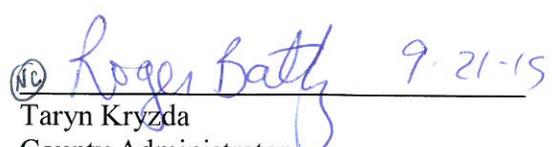
IN WITNESS WHEREOF, the COUNTY and the CONTRACTOR have executed this Agreement as of the date first above written.

REVIEWED BY

**BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**



John Polley
Utilities & Solid Waste Director



Taryn Kryzda
County Administrator

WHARTON-SMITH, INC.

Ronald F. Davoli

Ronald F. Davoli
President/CEO

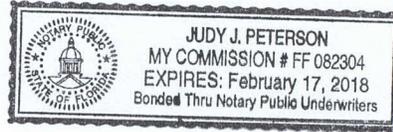
NOTARY FOR THE CONTRACTOR

State of Florida
County of Seminole

The foregoing instrument was acknowledged before me this 3rd day of September, 2015,
by Ronald F. Davoli, to me known to be the person who
signed the foregoing instrument or produced _____ as identification.

WITNESS my hand and official seal this 3rd day of September, 2015.

Judy J. Peterson
Notary Public



**EXHIBIT A
SAMPLE WORK ORDER**

RFB

ENTER CONTRACT NAME HERE (I.E. GENERAL CONTRACTING SERVICES)
WORK ORDER NO. _____

Pursuant to that certain Contract (“**Contract**”) between Martin County (“**County**”) and _____ (“**Contractor**”) dated _____, **Contractor** hereby agrees to provide the services specified on Exhibit “A”, under the terms and conditions and at a cost of \$_____ all as more specifically described in Exhibit “A”, attached hereto and incorporated by this reference. The terms of the **Contract** shall be deemed to be incorporated in each individual Work Order as if fully set forth herein.

Substantial Completion Time: _____ calendar days

Final Completion Time: _____ calendar days

Liquidated Damages: _____ per day

IN WITNESS WHEREOF, the **County** and the **Contractor** have executed this Work Order effective this _____ day of _____ 20__.

CONTRACTOR COMPANY NAME

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

Name & Title

Department Director Name/Title

A Payment & Performance Bond for all jobs over \$200,000 is required to be recorded with the Martin County Clerk of the Circuit Court before commencement of work per F.S. 255.05



**RFB#2015-2813
WATER & WASTEWATER PLANT CONSTRUCTION**

Description	Unit	Cost
Project Superintendent	HR	85.00
Project Manager	HR	110.00
Forman	HR	55.00
General Laborer (1 man crew)	HR	30.00
General Laborers (2 man crew)	HR	60.00
General Laborers (3 man crew)	HR	90.00
Electrical Control Programmer	HR	130.00
Electrician	HR	55.00
Mason	HR	45.00
Mechanic	HR	65.00
Heavy Equipment Operator	HR	50.00
Administrative/Clerical	HR	22.00
Material Markup	%	10%

INSTRUCTIONS

Submit one original and one copy of all required bid forms.

Bids must be received no later than the date and time stated in the Advertisement.

Bids received after that time & date will not be considered.

BID SIGNATURE SECTION

This form must be returned with bid. Bids in any other format will not be accepted.

Wharton-Smith, Inc.	407-321-8410
Company Name	Telephone
Ronald F. Davoli	407-320-1779
Authorized Contract Signature Name	Fax
President/CEO	59-2392802
Title	Federal Employer ID#
750 Monroe Road	rdavoli@whartonsmith.com
Street Address	E-mail Address
Sanford, FL 32771	
City, State, Zip	Authorized Signature Ronald F. Davoli, President/CEO