

**THE GOVERNING BOARD OF THE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
ANNUAL CIVIL WORKS CONSTRUCTION CONTRACT 2022-2025
INVITATION FOR BID 37848**

The Governing Board of the St. Johns River Water Management District (the "District"), requests that interested parties respond to the solicitation below by 2:00 p.m., July 14, 2022. Further information is available through DemandStar at *Demandstar.com* [(800) 711-1712], Vendor Registry at *Vendorregistry.com*, or the District's website at *sjrwmd.com*. Solicitation packages may be obtained from DemandStar, Vendor Registry, or the District by calling or emailing Amy Lucey, Senior Procurement Specialist, at 321-409-2156 or ALucey@sjrwmd.com. Responses will be opened at the Palm Bay Service Center, 525 Community College Parkway, Palm Bay, FL 32909.

The objective of this contract is to provide water quality improvements, enhancement and restoration of wetland habitat and natural systems, flood protection and flood damage repairs and associated site work improvements to compliment these features.

It is the District's intention to award contracts to two (2) contractors under this Invitation For Bids. To date, the District issued 57 work orders over the last three years for an estimated amount of \$3.5 million with a range of work orders between \$5,000 and \$300,000. Under the new contract(s), issued the District does not expect to issue work orders that exceed \$300,000. If an award is made, a Contract shall be executed for a term of three years. The estimated budget for the three (3) years is \$4,000,000.00, which includes emergency management funds that are contingent upon storm damage. The estimated budget for the first year of this contract is \$1,400,000.00, however, the actual amount will vary depending on District needs. Funding is contingent upon availability of funds of each fiscal year.

All work under this contract shall be performed through Work Orders. There are two types of Work Orders (Type 1/Time and Materials and Type 2/Fixed Price). The District will determine the type of Work Order to be issued for each project. The Contractor shall provide all labor, equipment, and materials necessary to complete all tasks described in the Work Order. The District reserves the right to purchase and provide the Contractor all or part of any materials or equipment to be incorporated in the work via direct purchase, independently of the Work Order. In addition, the District may supplement the Contractor's work-force with District equipment/staff.

Prior to award of each Work Order, the selected Contractor shall, if requested, provide a written statement of availability of the equipment and labor necessary to perform the work identified. The District reserves the right to award of each Work Order based on the ability to perform in a timely manner, availability of required equipment, cost of required equipment, past performance on similar work, availability of qualified staff, and other factors deemed critical to the performance of the Work.

The engineer's construction estimate for the project is \$4,000,000.00.

A **Non-Mandatory Pre-Bid Conference** is scheduled for June 15, 2022, at 10:30 a.m., at Palm Bay Service Center, 525 Community College Parkway, Palm Bay, FL 32909. The purpose of the pre-bid conference is to clarify requirements of this solicitation.

Special accommodations for disabilities may be requested through Amy Lucey, or by calling (800) 955-8771 (TTY), at least five business days before the date needed.

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INSTRUCTIONS TO RESPONDENTS

1. DEFINITIONS

The definitions of capitalized terms used in this solicitation that are not otherwise defined herein can be found in the sample contract document (the “Agreement”) that is at the end of these instructions. The Agreement includes these Instructions to Respondents, any addenda published by the District, the bid provided by Respondent (the “Bid”), and all required certifications and affidavits.

2. CONTRACT ADMINISTRATION

All inquiries related to this solicitation may only be directed to the Procurement Specialist:

Amy Lucey, Senior Procurement Specialist
 Phone: 321-409-2156
 Fax: 321-722-5357
 Email: ALucey@sjrwmd.com

Between the release of this solicitation and the posting of the notice of intended decision, Respondents to this solicitation or persons acting on their behalf may not contact any employee or officer of the District concerning any aspect of this solicitation, except the procurement employee listed above. Violation of this provision is grounds for rejecting a response.

3. WHERE TO DELIVER BID

Respondents may now upload bids to www.demandstar directly. Please be sure to include all required documents or:

The Bid may be submitted in a sealed envelope to:

Amy Lucey, Senior Procurement Specialist
 St. Johns River Water Management District
 Palm Bay Service Center
 525 Community College Parkway, Palm Bay, FL 32909

Respondents must clearly label the Bid envelope with **large bold, and/or colored lettering (place label on inner envelope if double sealed)** as follows:

SEALED BID — DO NOT OPEN
 Respondent’s Name: _____
 Invitation for Bid: 37848
 Opening Time: 2:00 p.m.
 Opening Date: July 14, 2022

4. OPENING OF BIDS

Respondents or their authorized agents are invited to attend the opening of the Bids at the following time and place:

2:00 p.m., July 14, 2022
 St. Johns River Water Management District
 Palm Bay Service Center
 525 Community College Parkway, Palm Bay, FL 32909

The Florida Public Records Act, §119.071(1)(b), Fla. Stat., exempts sealed Bids from inspection and copying until such time as the District provides notice of an intended decision pursuant to §120.57(3)(a), Fla. Stat., or until 30 days after opening of bids, proposals, submittals, or final replies, whichever is earlier. This exemption is not waived by the public opening of the Bids.

Unless otherwise exempt, Respondent's Bid is a public record subject to disclosure upon expiration of the above exemption period. If any information submitted with the Bid is a trade secret as defined in §812.081, Fla. Stat., and exempt from disclosure pursuant to §815.04, Fla. Stat., Respondent must clearly identify any such material as "CONFIDENTIAL TRADE SECRET" in its Bid and explain the basis for such exemption. The District reserves the right, in its sole judgment and discretion, to reject a Bid for excessive or unwarranted assertion of trade secret confidentiality and return the Bid to Respondent.

5. **PREPARATION AND ORGANIZATION OF BID DOCUMENTS**

Respondent must submit its Bid in "digital" format. Instructions for submitting are provided below.

1. Respondents must submit the following fully executed documents on reproduced copies of the attached forms provided in FORMS:
 - a. Bid Form
 - b. Contractor's Hourly Rate Cost Schedule
 - c. Certificate as to Corporation
 - d. Affidavit as to Non-collusion and Certification of Material Conformance with Specifications
 - e. Qualifications (General and Similar Projects/References)
 - f. General Contractor or Underground Utility and Excavation Contractor's license, and any applicable licenses for the Respondent and individual to support its qualifications. (No District Form provided)
 - g. Bond capability letter – up to \$300,000 per project (No District Form provided)
 - h. Drug-Free Workplace Form (not required unless there is a tie bid)
2. Respondents must submit the original bid package in the form and manner specified herein. All blank spaces on the bid documents must be typewritten or legibly printed in ink. Respondent must specify the cost for any one complete bid item or the entire work described in the Agreement (the "Work") in figures as indicated by the spaces provided. In the event you decline to submit a bid, the District would appreciate submittal of the "No Response Form" provided at the end of the "FORMS" section to describe the reason for not submitting a bid.
3. Respondent must follow all procedures for digital submission or the Respondent's Bid may be determined as "non-responsive" and rejected.
4. Unless directed otherwise, all information required by the solicitation, including the forms and questionnaires listed under "A" above must be completed (typed or hand written) and included in the submission in electronic format (forms must be completed and converted/scanned to PDF format (Adobe)).
5. The file-naming conventions for the bid shall include:
 - Bid: IFB # Respondent's name (abbreviated) Due Date
 - (Example: IFB 12345 ABC Company 01-15-16)
6. All digitally submitted files shall be saved to a single CD or pin/thumb/jump drive. The CD or pin/thumb/jump drive **MUST** be placed in a sealed envelope pursuant to the instructions under Item 3 for sealed Bid – **DO NOT SUBMIT YOUR BID BY EMAIL — THIS WILL RESULT IN THE BID BEING REJECTED AS NON-RESPONSIVE.**
7. Please do **NOT** password protect your files. The District recommends that Respondents confirm their Submittal will open correctly on a non-company owned computer. Any electronic submittal received

by the District that does not open on a District-owned computer is subject to rejection as a defective response.

All of the forms and questionnaires in the Invitation for Bids package are available upon request in Microsoft® Word to aid the Respondent in submitting its Bid.

If you need assistance or have any questions about the format, please call or email Amy Lucey at 321-409-2156 or ALucey@sjrwmd.com.

6. INQUIRIES AND ADDENDA

District staff are not authorized to orally interpret the meaning of the specifications or other Agreement documents, or correct any apparent ambiguity, inconsistency, or error therein. In order to be binding upon the District, the interpretation or correction must be given by the Procurement Specialist and must be in writing. The Procurement Specialist may orally explain the District's procedures and assist Respondents in referring to any applicable provision in the Invitation for Bids documents, but the Respondent is ultimately responsible for submitting the Bid in the appropriate form and in accordance with written procedures.

Every request for a written interpretation or correction must be received at least nine days prior to opening of Bids in order to be considered. Requests may be submitted by fax at 321-722-5357 or by email at ALucey@sjrwmd.com. Interpretations, corrections, and supplemental instructions will be communicated by written addenda to this solicitation posted by DemandStar and Vendor Registry to all prospective Respondents (at the respective addresses furnished for such purposes) no later than five days before the opening of Bids.

Submission of a Bid constitutes acknowledgment of receipt of all addenda. Bids will be construed as though all addenda had been received. Failure of the Respondent to receive any addenda does not relieve Respondent from any and all obligations under the Bid, as submitted. All addenda become part of the Agreement.

7. BUDGET

The estimated budget for the Work is \$4.0 million however, an estimated amount of \$1.4 million is anticipated for the first year of the Work and the actual amount will vary depending on District needs. The above amount is an estimate only and does not limit the District in awarding the Agreement. Respondents are cautioned to not make any assumptions from the budget estimate about the total funds available for the Work. The District retains the right to adjust the estimated budget in awarding the Agreement. The District also reserves the right to reject all Bids if subsequent negotiations with qualified Respondents result in costs over this estimated budget amount. In addition, the District reserves the right to increase, decrease, or delete any class, item, or part of the Work in order to reduce costs for any reason. The District may discuss alternatives for reducing the cost of the Work with Respondents and make such modifications as it determines to be in its best interest.

8. MINIMUM QUALIFICATIONS

Respondent must use the "Qualification" forms (General and Similar Projects/References) provided in these documents to document the minimum qualifications listed below. Failure to include these forms with the Bid may be considered non-responsive.

- a. Respondent must have employed a Florida Licensed General Contractor or a Certified Underground Utility and Excavation Contractor who shall have at least five years of experience.
- b. Respondent must provide a minimum of three (3) different projects/references as defined below that demonstrate its experience for general earthwork to include construction of stormwater treatment ponds, water control structures and flood control levees. All projects are to have been completed in the past five years and the client for each of the projects 1, 2 & 3 will be used as a reference.

Project/Reference #1 shall meet the following:

- The Respondent's portion of the project must have a minimum value of \$200,000 whether a prime contractor or a subcontractor on said project.
- Project shall be a General Civil Works Construction Project

Project/Reference #2 shall meet the following:

- The Respondent's portion of the project must have a minimum value of \$100,000 whether a prime contractor or a subcontractor on said project.
- Project shall be a Stormwater Treatment or a Flood Control Levee Construction Project.

Project/Reference #3 shall meet the following:

- The Respondent's portion of the project must have a minimum value of \$50,000 whether a prime contractor or a subcontractor on said project.
- Project shall be a Water Control Structure/Culvert Installation Project

Irrespective of the minimum qualifications stated above, the District may make such investigations as it deems necessary to determine the ability of the Respondent to perform the Work. The District reserves the right to reject any Bid if the evidence submitted by such Respondent and/or the District's independent investigation of such Respondent fails to satisfy the District that such Respondent is properly qualified to carry out the obligations of the Agreement and complete the Work in a manner acceptable to the District within the time period specified.

9. **BID GUARANTY**

For the purposes of this bid, a bid guaranty is not required

10. **JOINT VENTURE**

Two or more firms may form a joint venture for purposes of responding to this solicitation. Joint ventures shall be considered as one entity for the purposes of evaluating the responses. A Joint Venture firm may satisfy the minimum requirements of this solicitation for the Respondent through one or more of the firms comprising the Joint Venture. The Joint Venture shall at a minimum comply with the following additional requirements:

1. The Joint Venture shall in its own name, be registered with the State of Florida Division of Corporations prior to the bid submittal date.
2. Each individual Firm comprising of the Joint Venture shall, in its own name, be qualified in their respective areas of expertise prior to the submittal date.
3. A firm may only submit once either as an individual firm/Respondent or as a part of a Joint Venture (JV).

11. **SIGNATURE AND CERTIFICATION REQUIREMENTS**

An individual submitting a Bid must sign his/her name therein and state his/her address and the name and address of every other person interested in the Bid as principal. If a firm or partnership submits the Bid, state the name and address of each member of the firm or partnership. If a corporation submits the Bid, an authorized officer or agent must sign the Bid, subscribing the name of the corporation with his or her own name and affixing the corporate seal. Such officer or agent must also provide the name of the state under which the corporation is chartered, and the names and business addresses of the President, Secretary, and Treasurer. Corporations chartered in states other than Florida must submit evidence of registration with the Florida Secretary of State for doing business in the State of Florida. Respondent must certify that all persons or entities having an interest as principal in the Bid or in substantial performance of the Work have been identified in the Bid forms.

12. DISQUALIFICATION OF RESPONDENTS

Any of the following causes will be considered as sufficient grounds for disqualification of a Respondent and rejection of the Bid:

- a. Contacting a District employee or officer other than the procurement employee named in this solicitation about any aspect of this solicitation before the notice of intended decision is posted.
- b. Submission of more than one Bid for the same subject matter by an individual, firm, partnership, or corporation under the same or different names;
- c. Evidence of collusion among Respondents;
- d. Submission of materially false information with the Bid;
- e. Information gained through checking of references or other sources which indicates that Respondent may not successfully perform the Work;
- f. Incomplete contractual commitment(s) to other persons or entities, which, in the sole judgment of the District, may hinder or prevent the prompt completion of the Work if awarded to Respondent;
- g. Respondent is failing to adequately perform on any existing contract with the District;
- h. Respondent has defaulted on a previous contract with the District;
- i. The evidence submitted by Respondent, or the District's investigation of Respondent, fails to satisfy the District that Respondent is properly qualified to carry out the obligations of the Agreement in a manner acceptable to the District and within the time period specified;
- j. Any other cause that is sufficient to raise doubt regarding the ability of a Respondent to perform the Work in a manner that meets the District's objectives for the Work.

13. REJECTION OF BID

Bids must be delivered to the specified location and received before the Bid opening in order to be considered. Untimely Bids will be returned to the Respondent unopened. Bids will be considered irregular and may be rejected if they show material omissions, alterations of form, additions not called for, conditions, limitations, or other material irregularities. The District may consider incomplete any Bid not prepared and submitted in accordance with the provisions specified herein, and reserves the right to waive any minor deviations or irregularities in an otherwise valid Bid.

The District reserves the right to reject any and all Bids and cancel this request for qualifications when it determines, in its sole judgment and discretion, that it is not in its best interest to award the agreement.

14. WITHDRAWAL OF BIDS

Respondent may withdraw its Bid if it submits such a written request to the District prior to the designated date and hour of opening of Bids. Respondent may be permitted to withdraw its Bid no later than 72 hours after the Bid opening for good cause, as determined by the District in its sole judgment and discretion.

15. AWARDING THE AGREEMENT

- a. The Agreement will be awarded to the two lowest responsive, responsible Respondents, being the Respondents with the lowest Total Bid Cost who demonstrate, in accordance with the requirements of the bid documents, a verifiable history of the skill, ability, integrity, and reliability necessary for the faithful performance of the Agreement (the "Successful Respondents"). The Agreement may be modified based on the District's acceptance of any alternatives listed in the bid that the District deems in its best interest. Lowest Total Bid Cost shall be based upon a Hypothetical Project developed by District staff. The Total Bid Cost will be determined based on the cost to perform the work in the Hypothetical Project which will be comprised of a representative number of items from the Hourly Rate Cost Schedule.
- b. Section 286.0113, Fla. Stat., exempts from being open to the public, any portion of a meeting at which:
(1) a negotiation with a Respondent is conducted pursuant to a competitive solicitation; (2) a Respondent makes an oral presentation as part of a competitive solicitation; (3) a Respondent answers questions as part

of a competitive solicitation; or (4) negotiation strategies are discussed. Also, recordings of, and any records presented at, the exempt meeting are exempt from §119.07(1) and §24(a), Art. I of the State Constitution (Public Records) until such time as the District provides notice of an intended decision or until 30 days after opening the bids, proposals, submittals, or final replies, whichever occurs earlier. A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

- c. Pursuant to §286.0113 Fla. Stat., if the District rejects all bids and concurrently provides notice of its intent to reissue the competitive solicitation, any recordings or records presented at any exempt meeting relating to the solicitation shall remain exempt from §119.07(1) and §24(a), Art. I of the State Constitution (Public Records) until such time as the District provides notice of an intended decision concerning the reissued competitive solicitation or until the District withdraws the reissued competitive solicitation. A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial District notice rejecting all bids.
- d. If two or more bids are equal in all respects, the Agreement will be awarded as follows: (1) to the Respondent that certifies compliance with §287.087, Fla. Stat., via the Drug-Free Workplace Form; (2) to a Respondent university in the State University System pursuant to §373.63, Fla. Stat.; (3) to a Respondent whose bid contains commodities manufactured, grown, or produced within the State of Florida pursuant to §287.082 Fla. Stat.; or (4) by lot.
- e. For 60 days after the designated date and hour of the opening of bids, the Respondent will not be permitted to increase its bid cost.
- f. The District reserves the right to award the Agreement to the next lowest available bidder in the event the Successful Respondent fails to enter into the Agreement, or the Agreement with said Respondent is terminated within 90 days of the effective date.
- g. All Respondents will be notified of the District's intent to award or decision to award the Agreement. For the purpose of filing a bid protest under §120.57(3), Fla. Stat., the time period will commence as provided in "NOTICES AND SERVICES THEREOF."

16. EXECUTION OF AGREEMENT

Submittal of a Bid binds the Successful Respondent to perform the Work upon acceptance of the Bid and execution of the Agreement by the District.

Unless all Bids are rejected, a contract substantially in the form included in these documents will be provided to the Successful Respondent, who must execute and return the Agreement to the District within ten days of the date of receipt, along with the following:

- a. A completed Internal Revenue Service Form W-9
- b. Satisfactory evidence of all required insurance coverage
- c. Proof satisfactory to the District of the authority of the person or persons executing the Agreement on behalf of Respondent
- d. All other information and documentation required by the Agreement

The District will not execute the Agreement until the above documents have been executed and delivered to the District. The Agreement will not be binding until executed by the District. A copy of the fully executed Agreement will be delivered to the Successful Respondent. The District reserves the right to cancel award of the Agreement without liability at any time before the Agreement has been fully executed by all parties and delivered to the Successful Respondent.

Failure upon the part of the Successful Respondent to execute the Agreement or timely submit the required evidence of insurance coverage, or any other matter required by the Agreement, will be just cause, if the District so elects, for the recommended award to be annulled. In such event, the District will be entitled to the full amount of the guaranty, not as a penalty, but in liquidation of and compensation for damages sustained.

17. EXAMINATION OF AGREEMENT DOCUMENTS AND WORK AREA

Respondent is solely responsible for being fully informed of the conditions under which the Work is to be performed in relation to existing conditions. Respondent is responsible for carefully examining the general area of the Work, the requirements of the drawings and other contract documents related to the Work, the time in which the Work must be completed, and any other details of the Work. Respondent must satisfy itself from its own personal knowledge and experience or professional advice as to the character of the Work, the conditions and materials to be encountered, the character, quality, and quantities of the Work, and any other conditions affecting the Work, including surrounding land.

Failure to satisfy the obligations of this paragraph will not relieve a Successful Respondent of its obligation to furnish all material, equipment, and labor necessary to perform the Agreement and to complete the Work for the consideration set forth in its Bid. Any such failure will not be sufficient cause to submit a claim for additional compensation.

No verbal agreement or conversation with any District officer, agent or employee, either before or after the execution of the Agreement, will affect or modify any of its terms.

18. DIVERSITY

The District is committed to the opportunity for diversity in the award and performance of all procurement activities. The District encourages its Prime Respondents to make a good faith effort to ensure that women and minority-owned business enterprises (W/MBE) are given the opportunity for maximum participation as second and lower tier participants. The District will assist Respondents by sharing information on W/MBEs to encourage their participation.

19. FLORIDA SALES TAX

The District is exempt from payment of State of Florida sales tax pursuant to §212.08(6), Fla. Stat. Any tangible personal property that is the subject of this Invitation for Bids is intended to remain tangible personal property and not become part of a public work owned by the District.

20. PUBLIC ENTITY CRIMES/DISCRIMINATORY VENDORS

In accordance with §287.133 and §287.134, Fla. Stat., a person or affiliate who has been placed on the convicted or discriminatory vendor lists following a conviction for a public entity crime or placement on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in §287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted or discriminatory vendor lists.

21. USE BY OTHER FLORIDA GOVERNMENTAL ENTITIES

Respondent may provide services to other State of Florida governmental entities pursuant to the terms and conditions of the Agreement. These governmental entities include other water management districts, state of Florida agencies (including members of the state university system and community college system), counties, school boards, municipalities, special districts, and other local public agencies or authorities. References to the St. Johns River Water Management District in the Agreement will be replaced with the purchasing entity and the District will not be a party to any other governmental entity's agreement to purchase. Nor will the District be responsible for payment for any goods or services delivered or performed for any other governmental entity that utilizes Respondent pursuant to this paragraph.

22. NOTICES AND SERVICES THEREOF

The District will publish notice of specifications and criteria, including addenda, intended agency decisions, or other matters pertinent to this solicitation on Onvia DemandStar at *DemandStar.com* and Vendor Registry at

vendorregistry.com. Onvia DemandStar and Vendor Registry may also be accessed through the District's web site at *sjrwmd.com*. In addition, the District will post notices of intended agency decisions at the District's headquarters, 4049 Reid Street, Palatka, Florida, Administration Building, Procurement Bulletin Board, on the date the publication is posted on Onvia DemandStar.

Notices that are posted on Onvia DemandStar and Vendor Registry are deemed received at 8:00 a.m. on the next business day following the date posted. Notices that are posted at the District's Procurement Bulletin Board are deemed received at 8:00 a.m. on the next business day following the date of posting. Notices will be posted for a minimum of 72 hours following the time at which they are deemed received. The time period for filing a Notice of Protest pursuant to §120.57(3), Fla. Stat., and Rule 28-110.003, Fla. Admin. Code, commences at the time notices are deemed received.

As a courtesy to Respondents, the District may send copies of the notices of intended agency decisions via email or facsimile to Respondent. These courtesy communications neither constitute official notice nor vary the times of receipt set forth above.

23. **PROTEST PROCEDURES**

Pursuant to §120.57(3), Fla. Stat., and Rule 28-110.003, Fla. Admin. Code, any person adversely affected by the procurement methodology described herein, or the specifications or criteria, including addenda, must file a Notice of Protest within 72 hours after receipt of the solicitation documents or addenda.

Pursuant to §120.57(3), Fla. Stat., and Rule 28-110.003, Fla. Admin. Code, any person adversely affected by a District decision or intended decision to award a contract, or to reject all bids, proposals, or qualifications, must file a Notice of Protest within 72 hours after receipt of the decision or intended decision. Pursuant to §120.57(3), Fla. Stat., and Rule 28-110.004, Fla. Admin. Code, the protester must also file with the District Clerk a Formal Written Protest within ten days after the date the Notice of Protest is filed with the District. The Formal Written Protest must state with particularity the facts and law upon which the protest is based. Pursuant to §287.042(2)(c), Fla. Stat., any person who files an action protesting the decision or intended decision must post with the District Clerk at the time of filing the formal written protest a bond, cashier's check, or money order made payable to the St. Johns River Water Management District in an amount equal to one percent (1%) of the estimated contract amount.

No additional time will be added for mailing. All filings must comply with Rule 28-106.104, Fla. Admin. Code, and must be addressed to and received by the District Clerk at the District Headquarters in Palatka, Florida within the prescribed time periods. The District will not accept as filed any electronically transmitted facsimile pleadings, petitions, Notice of Protest or other documents. Failure to file a protest within the time prescribed in §120.57(3), Fla. Stat., or failure to post the bond or other security required by law within the time allowed for filing a bond will constitute a waiver of proceedings under chapter 120, Fla. Stat. Mediation under §120.573, Fla. Stat., is not available.

BID FORM
(Include this form in the response)

RESPONDENT:

The undersigned, as Respondent, hereby declares and certifies that the only person(s) or entities interested in this bid as principal(s), or as persons or entities who are not principal(s) of the Respondent but are substantially involved in performance of the Work, is or are named herein, and that no person other than herein mentioned has any interest in this bid or in the Agreement to be entered into; that this bid is made without connection with any other person, company, or parties making a bid; and that this bid is in all respects fair and in good faith without collusion or fraud.

Respondent represents to the District that, except as may be disclosed in an addendum hereto, no officer, employee or agent of the District has any interest, either directly or indirectly, in the business of Respondent to be conducted under the Agreement, and that no such person shall have any such interest at any time during the term of the Agreement, should it be awarded to Respondent.

Respondent further declares that it has examined the Agreement and informed itself fully in regard to all conditions pertaining to this solicitation; it has examined the specifications for the Work and any other Agreement documents relative thereto; it has read all of the addenda furnished prior to the bid opening, as acknowledged below; and has otherwise satisfied itself that it is fully informed relative to the Work to be performed.

Respondent agrees that if its bid is accepted, Respondent shall contract with the District in the form of the attached Agreement, and shall furnish everything necessary to complete the Work in accordance with the time for completion specified in the Agreement, and shall furnish the required evidence of the specified insurance.

Acknowledgment is hereby made of the following addenda (identified by number) received:

Addendum No.	Date	Addendum No.	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Respondent (firm name) _____
Date

Address

Email address

Signature _____
Telephone number

Typed name and title _____
Fax number

CONTRACTOR'S HOURLY RATE COST SCHEDULE
(Include this form in the response)

Bid to be opened at 2:00 p.m., July 14, 2022

To: ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

In accordance with the advertisement requesting bids for the Annual Civil Works Construction Contract 2022-2025, subject to the terms and conditions of the Agreement, the undersigned proposes to perform the Work for the price contained in the following schedule (fill in all blanks).

The Respondent's rates shall include but not be limited to profit, overhead, fuel, oil, maintenance, onsite storage, and all other associated expenses to operate equipment and perform the Work. The Respondent's rates shall include everything required to perform the work.

RESPONDENTS MUST PROVIDE COSTS FOR ALL LISTED ITEMS ON THE HOURLY RATE COST SCHEDULE PROVIDED HEREIN. FAILURE TO COMPLETE ALL BLANKS MAY BE CAUSE TO CONSIDER THE BID NON-RESPONSIVE.

Pursuant to §287.084(2) Fla. Stat., a vendor whose principal place of business is outside the State of Florida must accompany any written bid, proposal, or reply documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

I HEREBY ACKNOWLEDGE, as Respondent's authorized representative, that I have fully read and understand all terms and conditions as set forth in this bid and upon award of such bid, shall fully comply with such terms and conditions.

Date

Respondent (firm name)

Address

E-mail address

Signature

Telephone number

Typed name and title

Fax number

ATTACHMENT H				
CIVIL WORKS ANNUAL CONSTRUCTION CONTRACT				
HOURLY RATE COST SCHEDULE				
CONTRACTOR'S NAME:				
NO.	CATEGORY 1 - HEAVY EQUIPMENT WITHOUT OPERATOR	*Fuel Max Gal/Hr	Diesel (D) or Gasoline (G)	Bid Rates
1.1	Front-end loader – with minimum 3 cubic yard bucket, root rake with clamp , and pallet forks	4	D	
1.2	Multi-terrain tracked loader (skid steer), 100 HP min	3	D	
1.3	Dozer - CAT D2 Wide Track (LGP) or equal min. blade capacity = 1.8 cy, variable pitch, angle & tilt blade for finish work	3.4	D	
1.4	Dozer - CAT D3 Wide Track (LGP) or equal min. blade capacity = 2.86 cy, variable pitch, angle & tilt blade for finish work	4.5	D	
1.5	Dozer CAT D5 Wide Track (LGP) or equal min. blade capacity = 5.1 cy	6	D	
1.6	Medium Trackhoe, min 31' reach & minimum 2.0 cy bucket, equivalent to CAT 320E thru 330F	5.3	D	
1.7	Large Trackhoe – min 38' reach & minimum 3.5 cy bucket, equivalent to CAT 336F thru 349F	9.6	D	
1.8	Long-reach Trackhoe, minimum 239 HP, 60' reach (measured from centerline of machine), & 1.0 cy bucket	9.6	D	
1.9	Off-road articulating dump truck – min. 18 cy capacity, 25 ton, equiv. Cat 725	12	D	
1.1	Vibratory roller, smooth 84 inch drum, min. 14,000 lbs at drum	4	D	
1.11	Sheepsfoot Roller or Soil Compactor, min. 12 tons 60" drum diameter	5	D	
1.12	Motor Grader - 12' Articulated Blade, AWD, equivalent to 672 John Deere, CAT 12M or 672 AWD	5.4	D	
1.13	Dump Truck, 18 cubic yard capacity	6	D	
1.14	Excavator W/ Fecon Cutting Head, min. 24' boom arm reach, min. mulching head of 36"	6	D	
1.15	100 HP Positrac with Fecon Cutting Head	4	D	
1.16	Mini Rubber tracks Trackhoe 39-45 HP, 18' min reach & 0.10 cy bucket	2	D	
1.17	Off-road articulating water truck, min. 3,000 gal., with hose reel and 12' spray bar	6	D	
1.18	Soil Stabilizer, min. 6' mixing width and 16" mixing depth	4	D	
1.19	Mechanics Truck and Trailer	3	D	
1.20	Tractor Truck with Low-Boy Trailer	6	D	
1.21	Double Deck Vibrating Screen – equivalent to a Powerscreen Powergrid 800	4	D	
CATEGORY 2 - EQUIPMENT				
2.1	Vibratory Tamper (Jumping Jack) - min. plate size 13" L x 11" W, min. impact force = 3,000 lb	2.0	G	
2.2	Vibrating Plate Compactor - min. 19.5 inch, & 6,000 lb impact force	1	G	
2.3	2"-4" Trash Pump with suction hose and 150' discharge hose	2	G	
2.4	6"- 8" Dry or Vacuum pump with suction hose and 150' discharge hose	3	D	
2.5	10" - Dry or Vacuum pump with suction hose and 150' discharge hose	4	D	
2.6	Cut Off Saw / Chain Saw	1	G	
2.7	Generator - 5kw min.	2	G	
2.8	17' - 24' Boat w/motor 3 person capacity	1	G	
2.9	Welding Machine 250 Amp with welding supplies	3	G	
2.10	Aquatic bucket attachment (to be used with Long-reach Track hoe)	N/A	N/A	
2.11	Ditching bucket attachment (to be used with Long-reach Track hoe), minimum 8 ft. wide	N/A	N/A	
2.12	Thumb attachment for a Medium or Large Track hoe	N/A	N/A	
2.13	Concrete pulverizer attachment for medium trackhoe - 36" min. opening	N/A	N/A	
2.14	Hydraulic hammer attachment for skidsteer 600 ft-lbs energy class	N/A	N/A	
CATEGORY 3 - LABOR				
3.1	Construction Superintendent			
3.2	Construction Foreman			
3.3	Lead Operator			
3.4	Heavy Equipment Operator Including Truck Drivers			
3.5	Equipment Operator with Fuel & O & M (Rental Equipment Only)	6	D	
3.6	Skilled Laborers			
3.7	Construction Laborers			
LABOR OVERTIME (Rates are 1.5 times the standard rates above)				
3.8	OT Construction Foreman			
3.9	OT Lead Operator			
3.1	OT Heavy Equipment Operator Including Truck Drivers			
3.11	OT Equipment Operator with Fuel & O & M (Rental Equipment Only)	6	D	
3.12	OT Skilled Laborers			
3.13	OT Construction Laborers			
CATEGORY 4 - ODC'S (Markup - 10% max)				
4.1	Materials:			%
4.2	Subcontractors			%
4.3	Rentals			%

Notes: * Fuel consumption based on average of Annual Contractors and utilized for fuel cost adjustments.

CERTIFICATE AS TO CORPORATION

(Include this form in the response)

The below Corporation is organized under the laws of the State of _____; is authorized by law to respond to this Invitation for Bids and perform all work and furnish materials and equipment required under the Agreement, and is authorized to do business in the state of Florida.

Corporation name: _____

Address: _____

Registration No.: _____

Registered Agent: _____

By: _____

(Official title)

(Affix corporate seal)

Attest: _____

(Secretary)

The full names and business or residence addresses of persons or firms interested in the foregoing bid as principals or officers of Respondent are as follows (specifically include the President, Secretary, and Treasurer and state the corporate office held of all other individuals listed):

Identify any parent, subsidiary, or sister corporations involving the same or substantially the same officers and directors that will or may be involved in performance of the Project, and provide the same information requested above on a photocopy of this form.

If applicable, attach a copy of a certificate to do business in the state of Florida, or a copy of the application that has been accepted by the state of Florida to do business in the state of Florida, for the Respondent and/or all out-of-state corporations that are listed pursuant to this form.

AFFIDAVIT AS TO NON-COLLUSION AND CERTIFICATION OF MATERIAL CONFORMANCE WITH SPECIFICATIONS

(Include this form in the response)

STATE OF _____

COUNTY OF _____

I, the undersigned, _____ being first duly sworn, depose and say that:

1. I am the owner or duly authorized officer, representative, or agent of:

_____ the Respondent that has submitted the attached bid.

2. The attached bid is genuine. It is not a collusive or sham bid.

3. I am fully informed respecting the preparation and contents of, and knowledgeable of all pertinent circumstances respecting the attached bid.

4. Neither Respondent nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Respondent, firm, or person to submit a collusive or sham bid in connection with the Agreement for which the attached bid has been submitted, or to refrain from bidding in connection with such Agreement, or has in any manner, directly or indirectly, sought by agreement, collusion, communication, or conference with any other Respondent, firm, or person to fix the price or prices in the attached bid of any other Respondent, or to fix any overhead, profit, or cost element of the bid prices or the bid price of any other Respondent, or to secure through collusion, conspiracy, connivance, or unlawful agreement any advantage against the District or any other person interested in the proposed Agreement.

5. The price(s) quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Respondent or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

6. No official or other officer or employee of the District, whose salary or compensation is payable in whole or in part by the District, is directly or indirectly interested in this bid, or in the supplies, materials, equipment, work, or labor to which it relates, or in any of the profits therefrom.

7. Any materials and equipment proposed to be supplied in fulfillment of the Agreement to be awarded conform in all respects to the specifications thereof. Further, the proposed materials and equipment will perform the intended function in a manner acceptable and suitable for the intended purposes of the District.

Signature: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20 ____.

Notary Public, state of _____ at Large

My commission expires:

(SEAL)

QUALIFICATIONS — GENERAL

(Include this form in the response)

As part of the bid, Respondent shall complete the following so that the District can determine Respondent's ability, experience, and facilities for performing the Work.

Name of Respondent: _____

Respondent's tax identification No.: _____

Year company was organized/formed: _____

Number of years Respondent has been engaged in business under the present firm or trade name: _____

Total number of years Respondent has experience in similar General earthwork (including work within wetlands); storm water; dewatering; levee construction; culverts and water control structures; erosion control facilities; cast-in-place and pre-cast concrete; stabilized and/or paved roadways; and ground cover is work described in the INSTRUCTIONS TO RESPONDENTS: _____

Has Respondent previously been engaged in the same or similar business under another firm or trade name? If so, please describe each such instance.

Has Respondent ever been adjudicated bankrupt, initiated bankruptcy, or been the subject of bankruptcy proceedings on behalf of the current entity submitting this bid or a prior entity that Respondent substantially operated or controlled? If yes, please describe the nature and result of those proceedings and the entity involved.

Describe the background/experience of the person or persons who will be primarily responsible for directing the Work that will be performed pursuant to this bid. This inquiry is intended to encompass the project manager and/or superintendent who will be engaged on a daily basis in directing performance of the Work.

QUALIFICATIONS — SIMILAR PROJECTS/REFERENCES

(Include this form in the response)

Respondent: _____

Respondent (or a combination of the firm, individual, or project manager assigned to the work) must have successfully completed at least three similar projects as described in Section 8b above, within the five years immediately preceding the date set for receipt of the response.

Completed Project/Reference #1 (Value of Respondent’s Work – Minimum of \$200,000 for a General Civil Works Construction Project):

Agency/company: _____

Current contact person at agency/company: _____

Telephone: _____ Fax: _____ Email: _____

Address of agency/company: _____

Name of project: _____

Description: _____

Respondent’s Project value: _____ Start date: _____ Completion date: _____
(month/year) (month/year)

Name(s) of assigned personnel:

Project manager: _____

Others: _____

Completed Project/Reference #2, Value of Respondent’s Work-Minimum of \$100,000 for a Stormwater Treatment or a Flood Control Levee Construction Project):

Agency/company: _____

Current contact person at agency/company: _____

Telephone: _____ Fax: _____ Email: _____

Address of agency/company: _____

Name of project: _____

Description: _____

Respondent’s Project value: _____ Start date: _____ Completion date: _____
(month/year) (month/year)

Name(s) of assigned personnel:

Project manager: _____

Others: _____

QUALIFICATIONS — SIMILAR PROJECTS/REFERENCES (continued)

(Include this form in the response)

Respondent: _____

Completed Project/Reference #3, Value of Respondent's Work-Minimum of \$50,000 for a Water Control Structure/Culvert Installation Project:

Agency/company: _____

Current contact person at agency/company: _____

Telephone: _____ Fax: _____ E-mail: _____

Address of agency/company: _____

Name of project: _____

Description: _____

Respondent's Project value: _____ Start date: _____ Completion date: _____

(month/year)

(month/year)

Name(s) of assigned personnel:

Project Manager: _____

Others: _____

DRUG-FREE WORKPLACE FORM
 (This form required only in the event of a tie response)

The Respondent, (business name) _____, in accordance with §287.087, Fla. Stat., hereby certifies that Respondent does the following:

1. Informs employees about the dangers of drug abuse in the workplace, the business’s policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations
2. Publishes a statement notifying employees that
 - a. the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against its employees for violations of such prohibition.
 - b. as a condition of working on the contractual services that are the subject of this solicitation, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893, Fla. Stat., or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five days after such conviction.
3. Gives each employee engaged in providing the contractual services that are the subject of this solicitation a copy of the statement specified in paragraph 2, above.
4. Imposes a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee’s community, by any employee convicted of a violation listed in sub-paragraph 2.b., above.
5. Makes a good faith effort to continue to maintain a drug-free workplace through implementation of §287.087, Fla. Stat.

As the person authorized to sign this statement, I certify that this firm complies fully with the above requirements.

By: _____

Title: _____

Date: _____

NO RESPONSE FORM

**ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
INVITATION FOR BIDS 37848**

Your reasons for not responding to this Invitation for Bids are valuable to the St. Johns River Water Management District’s procurement process. Please complete this form and return it to the Office of Financial Services no later than the date set for receipt of bids. Thank you for your cooperation.

Please check (as applicable):

- Specifications too “general” (explain below)
- Insufficient time to respond to the solicitation
- Do not provide this type of work for this project
- Schedule would not permit us to perform
- Unable to meet solicitation specifications
- Specifications unclear (explain below)
- Disagree with solicitation or Agreement terms and conditions (explain below)
- Other (specify below)

Remarks: _____

DATE _____

RESPONDENT (FIRM NAME) _____

ADDRESS _____

E-MAIL ADDRESS _____

SIGNATURE

TYPED NAME AND TITLE

TELEPHONE NUMBER

FAX NUMBER

SAMPLE AGREEMENT
BETWEEN THE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND _____ FOR
ANNUAL CIVIL WORKS CONSTRUCTION CONTRACT 2022-2025

THIS AGREEMENT is entered into by and between the GOVERNING BOARD of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT (the "District"), whose address is 4049 Reid Street, Palatka, Florida 32177-2571, and _____ (""), whose address is _____. All references to the parties hereto include the parties, their officers, employees, agents, successors, and assigns.

In consideration of the payments hereinafter specified, Contractor agrees to furnish and deliver all materials and perform all labor required for 37848, Annual Civil Works Construction Contract 2022-2025 (the "Work"). In accordance with IFB 37848, Contractor shall complete the Work in conformity with this Agreement, which consists of and incorporates all of the following documents: (1) advertisement for bids, proposals, or qualifications; (2) Instructions to Respondents; (3) addenda; certifications, and affidavits; (4) bid, proposal, or qualifications submittals; (5) Agreement, including the Statement of Work, and any Special Conditions or other attachments. If any provision in the body of this Agreement conflicts with any attachment hereto, the body of this Agreement shall prevail. This Agreement, including attachments, shall take precedence over all solicitation documents (items 1 – 4). The parties hereby agree to the following terms and conditions.

1. TERM

- (a) The term of this Agreement shall be from the Effective Date to the Completion Date. Time is of the essence for each and every aspect of this Agreement. Where additional time is allowed to complete the Work, the new time limit shall also be of the essence. All provisions of this Agreement that by their nature extend beyond the Completion Date survive termination or expiration hereof.
- (b) **Effective Date.** The Effective Date is October 1, 2022.
- (c) **Completion Date.** The Completion Date of this Agreement is September 30, 2025, unless extended by mutual written agreement of the parties. The Completion Date for specific work orders shall be the time for completion stated in each work order; which shall be agreed upon by both parties.

2. LIQUIDATED DAMAGES

- (a) If Contractor neglects, fails, or refuses to satisfactorily complete the Work by the Completion Date stated in the Work Order, Contractor shall, as a part of the consideration for this Agreement, pay the District the amount stipulated herein, not as a penalty, but as liquidated damages for such breach, for each day Contractor is in default thereafter. This amount is fixed and agreed upon between the parties due to the impracticability and extreme difficulty of ascertaining the actual damages the District would sustain in such event. The amount of liquidated damages shall be one half of one percent (.5%) of the total Work Order amount per day. Liquidated damages shall be deducted from payments as they become due and may be deducted from the retainage due upon completion. They constitute an agreed-upon liquidated sum solely for consequential damages attributable to delay and are not a substitute for any other consequential damages incurred by the District, such as the cost of finding a replacement Contractor for completion of the Work if this Agreement is terminated by the District for non-performance.
- (b) Contractor shall not be charged with liquidated damages or any excess cost when the District determines that Contractor's reasons for the time extension are acceptable in accordance with **FORCE MAJEURE; DELAYS; EXTENSION OF COMPLETION DATE**. A written extension of the Completion Date constitutes a waiver of liquidated damages to the new Completion Date unless expressly provided therein to the contrary.

3. DELIVERABLES

The type of Work to be completed is generally specified in the Statement of Work, Attachment A. Contractor shall deliver all products and deliverables as stated therein. Contractor is responsible for the professional quality, technical accuracy, and timely completion of the Work. Both workmanship and materials shall be of good quality. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials provided. Unless otherwise specifically provided for herein, Contractor shall provide and pay for all materials, labor, and other facilities and equipment necessary for performance of the Work. The District's Project Manager shall make a final acceptance inspection of the deliverables when completed and finished in all respects.

4. OWNERSHIP OF DELIVERABLES

All deliverables, including Work not accepted by the District, are District property when Contractor has received compensation therefor, in whole or in part. Any District source documents or other District or non-District documents, specifications, materials, reports, or accompanying data developed, secured, or used in the performance of the Work, excluding proprietary materials, as outlined in a Statement of Work, are District property and shall be safeguarded and provided to the District upon request. District plans and specifications shall not be used on other work and, with the exception of the original plans and specifications, shall be returned to the District upon request. This obligation shall survive termination or expiration of this Agreement.

5. FUNDING OF AGREEMENT

For satisfactory performance of the Work, the District agrees to pay Contractor(s) an amount not to exceed the amount of each work order. The total amount of all Work Orders under both contracts that will be awarded from this IFB #37848, shall not exceed \$4,000,000.00, unless otherwise approved by the Governing Board. The compensation for each Work Order shall be set forth in each Work Order and billed in accordance with the terms of the Work Order. The parties may agree in writing to re-allocate funding from the amounts described below.

Fiscal Year: October 1, 2022 – September 30, 2023	Amount:..... \$1,400,000
Fiscal Year: October 1, 2023 – September 30, 2024	Amount:..... \$1,300,000
Fiscal Year: October 1, 2024 – September 30, 2025	Amount:..... \$1,300,000

Funding for each applicable fiscal year is subject to District Governing Board budgetary appropriation.

6. PAYMENT OF INVOICES

- (a) Contractor shall submit itemized invoices on a monthly basis (as specified in each Work Order) by one of the following two methods: (1) by email to acctpay@sjrwmd.com (preferred) or (2) by mail to the St. Johns River Water Management District, Finance Director, 4049 Reid Street, Palatka, Florida 32177-2571. Each invoice shall be submitted in detail sufficient for proper pre-audit and post-audit review. If necessary for audit purposes, Contractor shall provide additional supporting information as required to document invoices.
- (b) **End of District Fiscal Year Reporting.** The District's fiscal year ends on September 30. Irrespective of the invoicing frequency, the District is required to account for all encumbered funds at that time. When authorized under the Agreement, submittal of an invoice as of September 30 satisfies this requirement. The invoice shall be submitted no later than October 30. If the Agreement does not authorize submittal of an invoice as of September 30, Contractor shall submit, prior to October 30, a description of the additional Work completed between the last invoice and September 30, and an estimate of the additional amount due as of September 30 for such Work. If there have been no prior invoices, Contractor shall

submit a description of the Work completed on the project through September 30 and a statement estimating the dollar value of that Work as of September 30.

- (c) **Final Invoice.** The final invoice must be submitted no later than 20 business days after the Completion Date; provided, however, that when the Completion Date corresponds with the end of the District's fiscal year (September 30), the final invoice must be submitted no later than 30 days after the Completion Date. Final invoices that are submitted after the requisite date shall be subject to a penalty of ten percent of the invoice. This penalty may be waived by the District, in its sole judgment and discretion, upon a showing of special circumstances that prevent the timely submittal of the final invoice. Contractor must request approval for delayed submittal of the final invoice not later than ten days prior to the due date and state the basis for the delay.
- (d) All invoices shall include the following information: (1) District contract number; (2) Contractor's name and address (include remit address, if necessary); (3) Contractor's invoice number and date of invoice; (4) District Project Manager; (5) Contractor's Project Manager; (6) supporting documentation as to cost and/or project completion (as per the cost schedule and other requirements of the Statement of Work; (7) Progress Report (if required); (8) Diversity Report (if otherwise required herein). Invoices that do not correspond with this paragraph shall be returned without action, stating the basis for rejection. Payments shall be made within 20 business days of receipt of the invoice. Disputes regarding invoice sufficiency are resolved pursuant to the dispute resolution procedure of this Agreement.
- (e) **Travel expenses.** Travel expenses are not included in the cost schedule, they are a cost of providing the service that is borne by Contractor and are only compensable when specifically approved by the District as an authorized District traveler. In such instance, travel expenses must be submitted on District or State of Florida travel forms and shall be paid pursuant to District Administrative Directive 2000-02.
- (f) **Payments.** Absent exceptional circumstances, Contractor is required to sign up and receive payment(s) electronically from the District via Automated Clearing House (ACH) payment.
- (g) **Retainage.** For a Type 1 work order, the District shall pay Contractor 100% of each approved invoice. For a Type 2 work order, the District may require a 5% retainage if the total work order is less than \$200,000. Should a Type 2 work order be equal to or greater than \$200,000 a 5% retainage will be required and the District will pay 95% of each approved invoice and retain five percent as retainage, to be paid upon completion of the punch list for each Work Order. Contractor may present the District with a payment request for part or all of the retainage as provided by §218.735(7)(e), Fla. Stat.
- (h) The approved rate for each classification of Contractor's staff and equipment are included in Contractor's Hourly Rate Schedule. In the absence of a rate for staff classification or piece of equipment, Contractor shall obtain pre-approval from the District's Work Order Manager (in writing or by email) for the use of a new classification or equipment to perform the Work for each work order.
- (i) **Invoicing.** In addition to these requirements the following supporting documentation shall be included with invoicing for each Type of work order:
- (1) **Type 1 Work Orders:** (hourly billing for labor and/or equipment and materials):
 - The District's Application for Payment forms shall be completed and submitted for all invoices.
 - Name of employee and/or type of equipment
 - Employee job classification
 - Hours worked and/or equipment utilized on a daily basis, as documented by Contractor's Daily Record of Hours, signed by Contractor and District staff.
 - The approved charge rate for each classification of Contractor employee and/or equipment included in Hourly Rate Cost Schedule and/or the Work Order authorizing the Work.
 - If billed for use of equipment or labor not in the Hourly Rate Cost Schedule, documentation of prior authorization

- Documentation of any required competitive procurement for equipment, subcontractors, or materials.
- Contractor's notarized affidavit shall be provided with each invoice stating that payment of subcontractors and materialmen shall be made pursuant to section 218.735, Fla. Stat.
- Proof of payment to subcontractors and vendors for which Contractor has already received payment from the District. Proof may be in the form of (1) a cancelled check; (2) a receipt marked paid by subcontractor or vendor; (3) a waiver of claim executed by the subcontractor or vendor; (4) Contractor's sworn affidavit that all subcontractors and vendors for which payment has been received from the District have been paid by the Contractor; or (5) any other form that has been pre-approved in writing by the District. For the final invoice purposes, proof of payment must be submitted not only as to amounts previously paid by the District, but also as to amounts included in the final invoice.
- A copy of the original vendor invoice(s) for Other Direct Costs. Altered or amended vendor invoices shall be rejected. If a vendor's invoice is from a supplier other than the one providing the lowest quote, Contractor shall explain the reason for not using the lowest cost supplier. The District reserves the right to reduce the amount reimbursed if a competitive market analysis clearly demonstrates that the invoice exceeds market value. In no event shall Contractor charge the District for any subcontractor's work that exceeds the approved Cost.
- Diversity Statement. If W/MBE subcontractors or suppliers are used, provide company names and amount spent with each. If no W/MBE sub-contractors or suppliers are used, so indicate.
- Contractor may provide a detailed invoice with supporting information, or alternatively, may provide a summary invoice with the information provided from Contractor's payroll or other records as supporting backup material.

(2) **Type 2 Work Orders** (fixed price):

- Contractor may utilize its own application for payment form when submitting invoices.
- Description of the Work that has been completed in accordance with the Work Order.
- Certification that the Work for which payment is requested has been completed in accordance with the Work Order, in a format approved by the District Project Manager.
- Proof of payment of subcontractors and vendors as described above for Type 1 Work Orders.
- Diversity Statement. If W/MBE subcontractors or suppliers are used provide company names and amount spent with each. If no W/MBE sub-contractors or suppliers are used, so indicate.

7. PAYMENT AND RELEASE

Contractor's acceptance of final payment shall constitute a release in full of all Contractor claims against the District arising from the performance of this Agreement, with the exception of any pending claims for additional compensation that have been documented and filed as required by this Agreement.

8. WORK ORDERS

- (a) The District reserves the right to award Work Orders (Type 1) based on the ability to perform in a timely manner, availability of required equipment, cost of required equipment, past performance on similar work, availability of qualified staff, and other factors deemed critical to the performance of each Work Order. The District may, at its sole discretion, request a "not to exceed" (Type 2) cost for any Work Order as a method of determining award. The District makes no guarantees of any amount of work to be awarded under the Agreement. The District reserves the right to directly purchase and provide to the Contractor all or part of the equipment or materials to be incorporated in the Work.
- (b) Contractor shall not proceed with any Work prior to the receipt of a written Work Order and shall commence the Work under each Work Order within 14 days of receipt, unless an alternate date is stated in

the Work Order. All Work shall be done to the satisfaction of the District's Project Manager or Work Order Manager and subject to the other terms of this Agreement. Commencement of Work constitutes acceptance of all of the terms and conditions of the Work Order.

- (c) **Type of Work Order.** When services are needed, the District and Contractor shall agree upon the specifics of the Statement of Work.
- (i) Generally, a Type 1 (time and materials) Work Order involves projects where field conditions, environmental or cultural resource preservation issues, subsurface and other physical conditions, or other aspects of the Work cannot be accurately defined. This often results in work being modified in the field by the District. Identification of the Work involved is typically concept level drawings with minimal details. A Type 1 Work Order will describe the general nature of the Work, including specific deliverables, if applicable, the materials to be incorporated into the Work, and the total authorized expenditure amount including an estimate of the equipment and labor necessary to complete the Work. Contractor is compensated for equipment and labor based upon the unit costs of this Agreement, and "Other Direct Costs" as defined in sub-paragraph (d)(iii), below. Invoices must be documented as to the number of hours worked and equipment and materials used sufficient for District audit in accordance with the unit costs of this Agreement and the Work Order. The District reserves the right to determine the means and methods of performing the Work and supplying materials.
 - (ii) A Type 2 (fixed-price) Work Order is issued when the extent and cost of the Work is agreed upon. It will describe with specificity the location, quantity, work limits, timeframes, deliverables, progress payments (if any), total cost, and any other matters pertaining to the Work. The fixed price includes all applicable permits, bonds, labor, equipment, supplies, project support, overhead and materials necessary to complete the Work. It is used when the scope of work can be clearly determined, such as when detailed design drawings and/or specifications and supporting documents are available and site conditions are known. It may include a detailed schedule of values, construction schedule, and any other necessary documents.
- (d) **Additional Provisions Applicable to Type 1 Work Orders**
- (i) Additional equipment and services
 - a. The District may issue a Work Order requiring the use of additional or specialized equipment not identified in the unit costs of the Agreement. The cost of such equipment may be identified separately and included in the specific Work Order to which it applies, or the Agreement may be amended through a Change Order with an amended cost schedule that includes such equipment. If deliverables are specified and sub-contractors are necessary to complete the Work, the Work Order shall specify the costs of the materials, equipment, and sub-contractors. The District must approve the hiring of subcontractors in order to ensure they are qualified to perform the Work and have been competitively procured.
 - b. If due to an emergency, the District determines that material, equipment and/or subcontracted services that were not included in the original Work Order are required, the District may authorize procurement thereof in a manner that most efficiently and effectively minimizes public risk and economic loss.
 - (ii) Equipment substitution. Equipment may be substituted by renting or leasing the same piece of equipment at the unit cost of the equipment under the agreement.
 - (iii) Other Direct Costs: Subject to prior written District approval, the District will reimburse Contractor for materials purchased by Contractor and incorporated into the Work, non-contract equipment, leases/rentals, subcontract work, bonds, and permits obtained by Contractor, including

applicable sales tax (“Other Direct Costs”), plus the allowable percentage markup in the Cost Schedule, provided Contractor adheres to the following the competitive procedures:

- a. Cost is less than or equal to \$10,000: Two documented quotes (verbal, written, or online); or a written explanation to and approval from the District Work Order or Project Manager for not receiving two quotes.
- b. Cost is greater than \$10,000: At least three written quotes, reviewed and approved by the District Work Order or Project Manager before purchase; or a written explanation to and approval from the Work Order or Project Manager for not receiving three quotes.
- c. Temporary facilities and temporary use materials required for erosion control and dewatering operations may be considered as Other Direct Costs upon prior approval by the District Work Order or Project Manager.
- d. Only equipment or materials that are incorporated into the Work and contracted services directly related to the Work qualify for compensation as Other Direct Costs. Compensation shall not be provided for any other costs associated with the Work not identified on the Cost Schedule or Work Order.

(iv) The District reserves the right to reject any proposed subcontractors.

- (e) **Mobilization/Demobilization.** The cost of mobilization and demobilization for each piece of Category 1 equipment shall not exceed eight hours, per occurrence, using the hourly rates in the Hourly Rate Cost Schedule for the equipment and an equipment operator for transport. Should the transport include more than 1 piece of equipment, the mobilization hours shall be equally divided among the equipment. Category 2 equipment shall not qualify for mobilization. Mobilization costs for Category 1 equipment shall include all costs associated with moving each authorized piece of equipment to the project site and its removal from the site upon completion of the work, or portion of the work, covered under the Work Order. Eight hours is the maximum number of hours for each piece of equipment which includes both mobilization and demobilization for each Work Order. Furthermore, should two pieces of equipment be placed on the same flatbed to mobilize, then the Contractor would only be compensated for one piece of equipment.

The Contractor shall be required to mobilize within 14 calendar days from the date the District executes the Work Order unless otherwise written in the Work Order. Once work has commenced the Contractor shall provide additional equipment within 72 hours of the District’s written request for equipment.

- (f) **Hourly Rates**

Category 1 Equipment (operator not included). The hourly equipment rates shall be paid for every hour the equipment is in operation by a qualified heavy equipment operator based on the equipment meter readings. The District will not compensate the Contractor for the time spent by personnel for fueling and providing any type of maintenance on the equipment. The District will not compensate the Contractor for equipment during idle times. Equipment idle time is defined as equipment that is on site, but not being utilized or operated for the task being performed. Equipment shall not be left running and unattended for any time period greater than 10 minutes unless specifically authorized by the District representative on-site. The District will only compensate the Contractor for the number of hours the equipment is utilized with one exception as follows, if equipment is not on the rate schedule list and is rented, the District will pay the rental rate with the specified markup.

All equipment listed under Category 1 on the Hourly Rate Cost Schedule shall have functional hour meters. Hour meter reading shall be recorded and tracked on the Daily Record of Hours (DRH) as supporting documentation for invoices. The equipment specified in the Hourly Rate Cost Schedule is given as a standard specification and size to accomplish the intended work. The Contractor may use any manufacturer’s equipment provided it is equal to the standards specified.

The District's "CONTRACTOR'S DAILY RECORD OF HOURS" Form required to be completed by the contract was developed for heavy equipment with hour meters. Hours of use for pay item number 1.12, Dump Trucks 18 c/yd capacity, which typically have odometers instead of hour meters cannot be recorded as hour meter readings. Because of this anomaly, hours for this pay item are to be recorded as zero (0) hours for the start meter reading each week and the number of hours operated input in the meter reading for each day of work on the Form. This will result in the total hours of use for each specific truck for the week and will be the basis for payment on this item

Category 2 Equipment. The hourly equipment rates shall be paid for every hour the equipment is in operation. This type of equipment does not require a qualified operator and therefore shall be operated by a construction laborer or a skilled laborer performing a function as defined herein. The Contractor shall record the number of hours each Category 2 equipment is utilized for each workday on the DRH for Type 1 Work Orders.

Category 3 Labor. The hourly rate for all labor categories shall include the individual and all tools of the trade typically associated with the work being performed, including appropriate overhead and profit in Category 3 of the Hourly Rate Cost Schedule. The Contractor shall record the number of hours worked for each person by labor categories for each workday on the DRH Log Sheet for Type 1 Work Orders.

Heavy Equipment Operators: Heavy equipment operators shall operate one or several types of power construction equipment, such as motor graders, bulldozers, scrapers, excavators, pile drivers, trucks, cranes, tractors, loaders or any equipment identified under Category 1 on the Rate Schedule to accomplish the work. The performance of incidental equipment maintenance by an operator shall be at the sole expense of the Contractor. Equipment operator charges shall only apply for operation of Category 1 equipment while running based on hour meter readings, except as may apply for show-up time or otherwise authorized in writing by the District Work Order Manager. The hours of work on equipment by a heavy equipment operator shall be charged at the Heavy Equipment Operator rate.

Construction Skilled Labor: The Contractor shall employ only experienced foremen, craftsmen, and other workmen competent in the specific work in which they are to be engaged. Skilled labor requires the use of specialized tools together with the knowledge and experience to efficiently and effectively perform the assigned tasks. The skilled laborers include but may not be limited to the following trades:

- a. **Brick Masons:** Brick masons shall be able to lay and bind building materials, such as brick, structural tile, concrete block, cinder block, glass block, and terra-cotta block, with mortar and other substances to construct or repair walls, partitions, arches, sewers, and other structures.
- b. **Carpenters:** Carpenters shall be able to construct, erect, install, or repair structures and fixtures made of wood and other materials, such as concrete forms, building frameworks, including docks, platforms, and other wooden structures typical for water control facilities and civil works construction.
- c. **Concrete Workers and Finishers:** Concrete workers and finishers shall be able to place concrete in forms; apply cement, sand, and finish surfaces to remove imperfections from freshly poured concrete walls, foundations roads and walkways. Concrete workers and finishers shall also be able to use concrete finishing machines, concrete vibrators, screeds, etc. typically required for civil related structures such as box culverts, headwalls, retaining walls, foundation pads, and sidewalks.
- d. **Pipe Layers:** Pipe layers shall lay pipe for storm or sanitation sewers, drains, and water mains and perform any combination of the following tasks: grade trenches or culverts, position pipe, and seal joints.
- e. **Reinforcing Metal Workers:** Reinforcing metal workers shall position and secure metal bars in concrete forms to reinforce concrete and determine number, size, shape, and location of reinforcing rods from blueprints or sketches and oral instructions.

- f. **Welders:** Welders shall use hand-welding, flame-cutting, hand soldering, or brazing equipment to weld or join metal components or to fill holes, indentation, or seams of fabricated metal products.
- g. **Layout Surveyor:** Layout surveyors shall be proficient in reading and interpreting plans, performing necessary calculations, and the setup and use of surveying equipment for setting grades and laying out structures.

Construction Laborers: Construction laborers shall perform tasks involving physical labor at building, highway, and heavy construction projects, demolition sites and other civil works construction and be required to clean and prepare sites, dig trenches, set braces to support the sides of excavations, erect scaffolding, clean up rubble and debris, and assist other craft workers. Construction laborers may also be required to operate hand and power tools of all types, such as pumps, air hammers, earth tampers, cement mixers, small mechanical hoists, surveying and measuring equipment, and a variety of other equipment and instruments.

Contractor's Office Personnel: Duties performed by Contractor's office staff for the Work including obtaining quotes, invoicing, Daily Record of Hours logs, etc. is considered as overhead. All costs associated with office staff duties shall be considered overhead, because their time cannot be monitored by the District. Therefore, the costs associated with these duties are considered to be incorporated in the rates on the Contractor's Hourly Rate Cost Schedule. There is no separate pay item for this labor category.

Show-Up Time. Show-up time based on rates in Category 3 of the Hourly Rate Cost Schedule shall apply if the Contractor comes to the project site to work as scheduled by the District's Work Order Manager, and the District determines that work cannot be commenced due to inclement weather or for any other reason established by the District. Show up time compensation shall be allowed for Type 1 Work Orders only and is limited to two hours maximum per person per occurrence. Show-up time may be logged as such for each labor category as applicable.

- (g) **Documentation of Other Direct Costs.** The Contractor shall provide, with their invoice, a copy of the original vendor invoice for materials purchased at the direction of the District. If a vendor's invoice is from a supplier other than the one that provided the lowest quote, the Contractor shall provide an explanation for not using the lowest cost supplier. Altered or amended vendor invoices shall be rejected. The District reserves the right to reduce the amount reimbursed for materials if a competitive market analysis clearly demonstrates invoice(s) for material costs exceed market value.

If, after a Work Order has been issued, the District's Work Order Manager determines that material, equipment and/or subcontracted services are required that were not included in the original cost estimate, the Contractor shall follow the District's procurement policy stated in the Agreement.

- (h) **Cancellation.** Rainouts/work cancellations for Type 1 Work Orders are solely at the District's discretion, and all hourly charges shall cease at the time that work ceases. Should work cancellation occur prior to logging two hours, Contractor's personnel shall be compensated as show-up time. Cancellation of work at any time after two hours of work, the personnel shall be compensated only for the number of hours worked.
- (i) **Location of Work.** The District has 18 counties within its boundaries. All equipment and labor hourly rates shall be applied uniformly for work performed anywhere within the District under this Agreement. The District does not reimburse the Contractor for lodging and meals while working on assignment in any of the 18 counties.
- (j) **Equipment Requirements.** The Contractor's equipment shall be in good working condition and properly maintained. All equipment deemed not to be in good working condition shall be removed from the District property and replaced with satisfactory equipment, at no additional cost to the District. If requested by the District, the Contractor shall submit copies of equipment maintenance records.

(k) Supervision

1. Contractor's Project Manager

The Contractor's Project Manager (PM) shall be responsible for overall coordination and management of the Work under this Agreement. All costs associated with PM's duties shall be considered overhead, because their time cannot be monitored by the District. All costs associated with these tasks are considered to be incorporated in the rates on the Hourly Rate Cost Schedule. There is no separate pay item for this labor category.

2. Construction Supervision

The three levels of supervision provided under the contract include the Construction Superintendent, Construction Foreman, and Lead Operator. For all Work Orders, the type of supervision provided by the Contractor may vary depending upon the size of the Contractor work force on the project and the complexity of the project scope outlined in the Work Order. The level of District supervision provided shall be specified in the Work Order. The type of supervision required will be at the discretion of the District Work Order Manager. The Construction Superintendent, Foreman, or Lead Operator shall be the Contractor's representative at a construction site. The three levels of supervision are defined below:

- a. **Construction Superintendent:** The Contractor shall employ only experienced Construction Superintendents meeting the following experience requirements. Contractor's Superintendent shall substantiate a minimum three years' experience within the past five years for construction-related work including the following: general earthwork; dewatering; levee construction; culvert and water control structure installation; constructing erosion control facilities; cast-in-place and pre-cast concrete installation; constructing stabilized and/or paved roadways; and stabilization of disturbed areas. The Construction Superintendent shall maintain daily logs of equipment and labor hours, perform basic construction layout, interpret plans, make field decisions based upon site conditions and be able to coordinate multiple construction activities/projects at the same time.

The hourly rate for the Construction Superintendent shall include the individual, a four-wheel drive vehicle (fuel, operation and maintenance), cell phone, basic survey equipment (level, rod, etc.) and appropriate overhead and profit. Responsibilities include ensuring the Work progresses according to the schedule, material and equipment are delivered to the site on time (if applicable), and activities of the various workers do not interfere with one another. The Construction Superintendent directs and supervises all activities conducted by the different trades, craft workers, equipment operators, and laborers (as applicable). The Superintendent may on occasion need to operate equipment on site. When the Superintendent operates equipment listed in Category 1 of the Hourly Rate Cost Schedule or some equivalent, his time while on the equipment shall be logged as a Superintendent.

If the District determines that a Construction Superintendent is not competent to perform his/her duties for the type of work, the Contractor shall be provided with a written request to immediately remove the Construction Superintendent from the site. The Contractor shall provide a competent replacement within 48 hours of receipt of the District's notice. The Contractor will not be compensated for any down time during the replacement period.

- b. **Construction Foreman:** Under a Type 1 Work Order, the District Work Order Manager may require a Foreman instead of a Construction Superintendent for supervisory responsibilities. In these cases, full time supervision by a Construction Superintendent is not required due to less complexity of the project and the number of workers provided by the Contractor. The hourly rate for the Construction Foreman shall include the individual, a four-wheel drive vehicle (fuel, operation and maintenance), cell phone, basic survey equipment (level, rod, etc.) and appropriate overhead and profit. The Foreman shall be responsible for maintaining daily logs of equipment and labor hours and

coordination with the District representative on work plans and daily activities. The Foreman shall also be responsible for directly supervising and coordinating activities of construction workers. In most cases, the Foreman may be required to work as an equipment operator for a portion of the work day. When the Construction Foreman operates equipment listed in Category 1 of the Hourly Rate Cost Schedule, his time while on the equipment shall be logged as a Foreman.

- c. **Lead Operator:** On Type I Work Orders which utilize a small work force and require limited supervisory responsibilities, a Lead Operator may be used for supervisory responsibilities with the approval of the District's Work Order Manager. The hourly rate for the Lead Operator shall include the individual, a four-wheel drive vehicle (fuel, operation and maintenance), cell phone, basic survey equipment (level, rod, etc.) and appropriate overhead and profit. The Lead Operator shall be responsible for maintaining daily logs of equipment and labor hours and shall coordinate with the District representative on work plans and daily activities. The Lead Operator is expected to operate equipment daily.
- (l) **Work Schedule.** For construction or other services upon District property, no Work shall be accomplished on official holidays or weekends unless approved in advance by the District Project Manager or Work Order Manager. Unless otherwise approved by the District Project Manager, Contractor's work hours on District property shall not commence before 7:00 a.m. and shall conclude on or before 6:00 p.m. All requests to change the schedule shall be coordinated with the District a minimum of 24 hours in advance of the change and confirmed in writing.

For a Type 1 Work Order the Construction Superintendent, Foreman, or Lead Worker shall maintain detailed daily logs with hours of operation on all equipment, labor, and materials delivered to the site together with a description of tasks performed and project site conditions on the Daily Record of Hours (DRH) log sheet. The DRH shall clearly identify equipment consistent with the Hourly Rate Cost Schedule. They shall collect Category 1 equipment hour meter readings on the equipment's arrival and departure from the work site daily. The hour meter readings for each piece of equipment shall be used to verify that the hours of equipment operation time recorded on the DRH log sheet is no greater than the equipment run time.

9. INDEMNIFICATION

Contractor shall indemnify and hold harmless, release, and forever discharge the District, its public officers, employees, agents, representatives, successors, and assigns, from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, arising from or caused by the Contractor, its employees or subcontractors, in the performance of the Work. Contractor shall further indemnify the District for all costs and penalties the District incurs related to any failure to offer Patient Protection and Affordable Care Act compliant health care coverage to Contractor-employees performing under this contract.

10. INSURANCE

Contractor shall acquire and maintain all insurance required by Attachment B, Insurance Requirements, and shall not commence Work until it has provided Certificates of Insurance to the District as per Attachment B. Receipt of Certificates of Insurance indicating less coverage than required does not constitute a waiver of the Insurance Requirements. Contractor waives its right of recovery against the District to the extent permitted by its insurance policies. Contractor's insurance shall be considered primary, and District insurance shall be considered excess, as may be applicable to Contractor's obligation to provide insurance.

11. FUNDING CONTINGENCY

This Agreement is at all times contingent upon funding availability, which may include a single source or multiple sources, including, but not limited to: (1) ad valorem tax revenues appropriated by the District's Governing Board; (2) annual appropriations by the Florida Legislature, or (3) appropriations from other agencies or funding sources. Agreements that extend for a period of more than one Fiscal Year are subject to annual appropriation of funds in the sole discretion and judgment of the District's Governing Board for each succeeding Fiscal Year. Should the Work not be funded, in whole or in part, in the current Fiscal Year or succeeding Fiscal Years, the District shall so notify Contractor and this Agreement shall be deemed terminated for convenience five days after receipt of such notice, or within such additional time as the District may allow. For the purpose of this Agreement, "Fiscal Year" is defined as the period beginning on October 1 and ending on September 30.

12. PROJECT MANAGEMENT PERSONNEL

- (a) The Project Managers listed below shall be responsible for overall coordination and management of the Work. Either party may change its Project Manager upon three business days' prior written notice to the other party. Written notice of change of address shall be provided within five business days. All notices shall be in writing to the Project Managers at the addresses below and shall be sent by one of the following methods: (1) hand delivery; (2) U.S. certified mail; (3) national overnight courier; (4) email or, (5) fax. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier are deemed delivered one business day after having been deposited with the courier. Notices via email or fax are deemed delivered on the date transmitted and received.

DISTRICT

Elwin Boynton, P.E., Project Manager
 St. Johns River Water Management District
 4049 Reid Street
 Palatka, FL 32177-2571
 Phone: 386-546-1833
 Email: wboynton@sjrwmd.com

CONTRACTOR

TBD, Project Manager
 TBD
 TBD
 TBD
 Phone: TBD
 Email: TBD

- (b) The District's Project Manager shall have sole responsibility for transmitting instructions, receiving information, and communicating District policies and decisions regarding all matters pertinent to performance of the Work.
- (c) Contractor shall provide efficient supervision of the Work, using its best skill and attention. Contractor shall keep, on the worksite during its progress, a competent superintendent that is satisfactory to the District. The superintendent shall not be changed except with the District's consent, unless the superintendent proves to be unsatisfactory to Contractor and/or ceases to be in its employ. The superintendent shall represent Contractor in the absence of Contractor's Project Manager. All directions given to him shall be as binding as if given to Contractor. If the District produces documented evidence and informs the Contractor that any person on the job is incompetent, disorderly, or is working contrary to the Agreement or the District's instructions, that person shall thereupon be immediately dismissed from the project and shall not be given employment on any work connected with this Agreement. The District may request Contractor replace its Project Manager if said manager fails to carry the Work forward in a competent manner, follow instructions or specifications, or for other reasonable cause.
- (d) Contractor shall maintain an adequate and competent professional staff. Contractor's employees, subcontractors, or agents shall be properly trained to meet or exceed any specified licensing, training and/or certification applicable to their profession. Upon request, Contractor shall furnish proof thereof.

13. SCHEDULING AND WORK PLANNING; PROGRESS REPORTING

- (a) **Pre-work Conference.** Within forty-eight hours of commencing work, Contractor shall schedule a pre-work conference with the District's Project Manager to discuss scheduling and other matters. If requested the Contractor shall provide a work plan for the District's approval at the pre-work conference. In addition and if requested, the Contractor shall provide the District a list of each subcontract exceeding ten percent of the Total Compensation.
- (b) **Reporting.** Type 1 Work Orders: The District requires Contractor to provide daily and weekly reports to include the Contractor's Daily Record of Hours which includes the budget tracking information for each project Work week (defined as Monday – Sunday). These forms include daily activities regarding the progress of the Work. (The Daily Record of Hours is an MS Excel file that will be provided electronically to each Contractor). These forms shall be completed for each day Work is performed. Completed forms shall be submitted to the District Work Order Manager by 12:00 PM on the third workday of the following week. If a District recognized holiday occurs on a Monday, then the form will be due by 12:00 PM on Thursday. Contractor may be penalized for neglecting, failing, or refusing to submit this form within the required timeframe stated above. The penalty for failing to timely submit the Daily Record of Hours form will be one percent (1%) of the amount accrued for the total approved labor and equipment hours for the applicable work week, for each 24-hour period that the required form is late, up to a maximum penalty of five percent. For example, if the form is due by 12:00 PM on Wednesday and received after this time, but before 5:00 PM on Thursday, then Contractor may be penalized one percent of the of the amount accrued for the total approved labor and equipment hours for the previous week. If the form is not received Friday by 5:00 PM, then the penalty would be three percent. For these purposes, weekends (Saturday and Sunday collectively) shall be considered as one day.

If not submitted within seven days after the due date, the District reserves the right to suspend work on the project until all paperwork that is due has been submitted with no additional costs to the District. The need for a daily report will be determined by the Work Order Manager.

Type 2 Work Orders: Contractor shall provide to the District the project schedule and update/status reports on a weekly basis or as provided in the Statement of Work. Reports will provide detail on progress of the Work and outline any potential issues affecting completion or the overall schedule. Reports may be submitted in any form agreed to by District's Project Manager and Contractor, and may include emails, memos, and letters.

- (c) **Progress Meetings.** The District may elect to conduct on-site progress meetings with Contractor on a frequency to be determined by the District. In such event, Contractor shall make available its Project Manager and/or superintendent and other appropriate personnel to discuss matters pertinent to the Work.
- (d) **Failure to Meet Schedule.** If progress of the Work falls five percent or more behind schedule, except as a result of District-approved delays, Contractor shall take all necessary steps to augment the work effort to get the project back on schedule. Should the progress of the Work fall ten percent or more behind schedule, the District may advise Contractor through a "cure" notice that this Agreement is subject to termination for cause if the failure is not cured within the time frame specified in said notice.

14. FORCE MAJEURE; DELAYS

- (a) **Force Majeure.** Contractor shall not be liable for failure to carry out the terms of this Agreement to the extent such failure is due to a Force Majeure event, except for failures that could have been reasonably foreseen and guarded against so as to avoid or reduce the adverse impact thereof. A Force Majeure event is hereby defined as the failure to carry out any of the terms of this Agreement due to any one of the following circumstances beyond the control of Contractor: (a) the operation and effect of rules, regulations, or orders promulgated by any commission, county, municipality, or governmental agency of the State of Florida or the United States, (b) a restraining order, injunction, or similar decree of any court

of competent jurisdiction, (c) war, (d) flood, (e) earthquake, (f) fire, (g) severe wind storm, (h) acts of public disturbance, (i) quarantine restrictions, (j) epidemics, (k) strikes, (l) freight embargoes, or (m) sabotage. The times specified herein for performances include delays that can ordinarily be anticipated due to adverse weather conditions. The District is not obligated to grant an extension of time due to adverse weather conditions unless such conditions rise to the level of Force Majeure.

- (b) **Delay.** Contractor shall not be compensated for delays caused by Contractor's inefficiency, rework made necessary by Contractor's error, failure to perform the Work as scheduled, or any other corrective or productivity measures made necessary by errors, omissions, or failures to properly perform the Work. Within ten days after the onset of a delay, Contractor shall notify the District in writing of the delay, which shall provide: (1) a detailed description the delay and its probable duration, (2) the specified portion of the Work affected, and (3) an opinion as to the cause of the delay and liability (if any) for the delay. Notices provided more than ten days after the inception of the delay shall only be effective as to additional costs or delay incurred during the ten day period preceding receipt of such notice. In the case of continuing cause delay for the same cause, only one notice of delay is necessary. **Failure to provide this notice waives any claim for extension of time or additional compensation resulting from such delay.** If the delay is due to the failure of another District contractor to complete its work in a timely manner, changes ordered in the Work, a Force Majeure event, or any other cause which the District, in its sole judgment and discretion, determines to justify the delay, then the Completion Date may be extended as necessary to compensate for the delay. All time extensions shall be in the form of a written amendment signed by both parties.

15. **MODIFICATION OF SPECIFICATIONS; CHANGE ORDERS; EMERGENCY CHANGES IN WORK**

- (a) **Modification of Specifications.** No verbal agreement or conversation with any officer, agent, or employee of the District after execution of this Agreement shall affect or modify any of its terms. No one is authorized to change any provision of the specifications without written authorization of the District. The presence or absence of a District inspector shall not relieve Contractor from any requirements of this Agreement. The District's Project Manager may also issue a District Supplemental Instruction (DSI) form (Attachment C) to authorize minor adjustments to the Work that are consistent with the purpose of the Work. A DSI may not be used to change the Total Compensation, quantity, quality or the Completion Date of the Work, or to change or modify the Agreement. The DSI shall indicate that both parties agree the adjustments to the Work do not affect the Total Compensation or the Completion Date. Both parties must sign the DSI. If Contractor believes that the proposed supplemental instructions will involve extra cost or extend the Completion Date and the District continues to direct that the DSI be implemented, Contractor shall implement said instructions and may submit a Change Order, subject to the dispute resolution procedure. In an emergency condition, the parties shall follow the procedure for "Emergency Changes in the Work."
- (b) **Change Orders**
- (i) The District may alter, add to, or deduct from the Work by executing a Change Order without liability to Contractor, except for the reasonable cost of any additional Work. All such Work within Contractor's capacity to perform shall be performed pursuant to the Change Order. Any associated claim for extension of time will be adjusted when the Change Order is issued. The parties shall negotiate the cost of the Change Order on an equitable basis, which may be determined in one or more of the following ways: (1) estimate and acceptance of a lump sum, (2) unit prices named in the contract or subsequently agreed upon, (3) costs and percentage or by (4) cost and a fixed fee. If the parties cannot agree upon cost, Contractor shall implement the Change Order and shall maintain and present in such form as the District Project Manager may direct the correct amount of the net cost of labor and materials, together with vouchers. The Project Manager will certify the amount due Contractor, including reasonable allowances for overhead and profit. Pending a final

determination of value, payments will be based upon the District Project Manager's certification. Final resolution of the amount due to Contractor shall be pursuant to the dispute resolution procedure.

- (ii) For any Change Order requests submitted by Contractor, the District may determine that District instructions to correct deficient Work, to stop the Work due to deficiencies in the Work, or any other matters that impose additional costs upon Contractor, do not warrant an increase in the Total Compensation or extension of the Completion Date. If Contractor disputes this determination, final resolution shall be pursuant to the dispute resolution procedure.
- (c) **Emergency Changes in Work.** In the event an emergency endangering life or property requires immediate action, the District may give Contractor an oral instruction to proceed with an emergency change in the Work, which will be confirmed in writing within five days. Within 15 days after commencement of the emergency change in the Work, Contractor shall provide the District with a written estimate of any increased costs or delays as a result thereof. **Failure to so notify the District constitutes a waiver of any right to an extension of time or increase in compensation.** Within 15 days after receipt of Contractor's estimate, the parties shall negotiate a Change Order. If unable to reach agreement, disputed issues shall be resolved pursuant to the dispute resolution procedure. In no event shall Contractor decline to perform the emergency change in the Work.

16. TERMINATION AND SUSPENSION

- (a) **District Termination for Cause.** The Agreement may be terminated by the District for cause in the event of any breach hereof, including, but not limited to, Contractor's: (1) failing to carry forward and complete the Work as provided herein; (2) failing to comply with applicable laws, regulations, permits, or ordinances; (3) failing to timely correct defective Work; (4) making a general assignment for the benefit of its creditors; (5) having a receiver appointed because of insolvency; (6) filing bankruptcy or having a petition for involuntary bankruptcy filed against it; (7) failing to make payments when due to subcontractors, vendors, or others for materials or labor used in the Work; (8) making a material misrepresentation to the District regarding the Work, or (9) any other material breach of this Agreement. In such event, the District shall provide Contractor with written notice of its intention to terminate this Agreement, stating the nature of the deficiency and the effective date of termination. At the District's sole judgment and discretion, the District may afford Contractor an opportunity to cure said deficiency, in which event the notice shall specify the time allowed. Upon termination, the District may take possession of the premises and of all materials thereon and finish the Work by whatever means it deems expedient. In such event, Contractor shall not receive any further payment until the Work is completed by the District. Contractor shall be liable for all costs involved in completing the Work, including additional managerial and administrative services, which shall be offset against any amount due to Contractor.
- (b) **District Termination for Convenience.** Notwithstanding any other provision hereof, the District may at any time terminate this Agreement or any Work issued under it, in whole or in part, without cause, upon 30 days' written notice to Contractor. In such event, Contractor shall be compensated for any Work performed prior to the date of termination and for materials that were ordered prior to receipt of notice of termination that cannot be returned to the vendor, which shall become District property. Upon receipt of notice, Contractor shall discontinue the Work on the date and to the extent specified therein and shall place no further orders for materials, equipment, services, or facilities, except as needed to continue any portion of the Work not terminated. Contractor shall also make every reasonable effort to cancel, upon terms satisfactory to the District, all orders or subcontracts related to the terminated Work. Contractor may not claim any compensation not specifically provided for herein, including, but not limited to: loss of anticipated profits; idle equipment, labor, and facilities; any additional claims of subcontractors and vendors.

- (c) **District Suspension for Cause.** The District may issue a written partial or full Stop Work Notice in the event Contractor fails to comply with or is negligent in performing any provision hereof. All performance shall immediately cease as per such notice and no further billable costs shall be incurred. The District may terminate this Agreement if Contractor fails or refuses to comply with a Stop Work Notice.
- (d) **District Suspension for Convenience.** The District may direct Contractor to stop Work, in whole or in part, whenever, in the District's sole judgment and discretion, such stoppage is necessary to ensure proper completion of the Work, avoid injury to third persons, or otherwise meet the District's objectives. The District shall provide Contractor not less than five days' written notice, except in emergency circumstances. Contractor shall immediately comply with such notice. Should such stoppage increase Contractor's cost, an equitable adjustment will be made by Change Order. The notice shall be effective until rescinded in writing, unless the period of suspension is stated in the notice.
- (e) **Contractor's Right to Stop Work or Terminate Agreement**
- (i) **Stop Work.** Contractor may stop work only under the following circumstances: (1) the Work is ordered temporarily discontinued by a court or other public authority; (2) it is necessary to stop work in order to protect the safety of Contractor or third persons; or (3) the District fails to pay Contractor when due any undisputed and adequately documented sum certified for payment by the District Project Manager. In such event, Contractor shall provide the District not less than seven days prior written notice of its intention to stop work, except in emergency circumstances or when necessary to prevent injury to persons or property.
- (ii) **Termination.** Contractor may terminate this Agreement under only the following circumstances: (1) the Work is ordered discontinued by a court or other public authority, through no act or fault of Contractor, for a period of not less than three months; (2) the District fails to pay Contractor when due any undisputed and adequately documented sum certified for payment by the District Project Manager. In such event, Contractor shall provide not less than 20 days written notice of its intention to terminate and afford the District the opportunity to cure said deficiency within said time period.
- (iii) **Duty to Perform.** Except as expressly provided above, in the event of any event, dispute, or other matter arising under this Agreement, Contractor shall fully perform the Work in accordance with the District's written instructions and may claim additional compensation as a Change Order, subject to the dispute resolution procedure.

17. ACCESS, WORK AREA, GATES

- (a) **Access.** The District will provide sufficient access to accomplish Work performed on District property. Contractor shall maintain all on-site roadways and paved and unpaved access roadways to and from the worksite in an acceptable and passable condition at no additional cost to the District, which shall, upon conclusion of the Work, be returned to their original condition. Land access to construction sites is restricted to the route designated by the District. Contractor is responsible for improvements and repairs to access routes required during construction. All access routes shall be used for the purpose of construction only. Contractor shall not disturb lands or waters outside the area of construction, except as may be found necessary and authorized by the District.
- (b) **Work Area.** All Work shall be confined to the designated work area(s). Contractor shall obtain written approval from the District before making any adjustments.
- (c) **Gates.** Contractor shall keep all gates to District lands or easements closed and locked in accordance with District specifications when not in use and shall immediately notify the District when a gate has become impaired due to vandalism or other cause. Unless otherwise stated in the specifications, Contractor shall be responsible for providing lock(s) to District properties.

18. ASSIGNMENT AND SUBCONTRACTS

Contractor shall not sublet, assign, or transfer any Work, involving more than 20% of the total cost of the Work, or assign any monies due or to become due hereunder, without the District's prior written consent. Neither District approval of a subcontractor nor any other provision of this Agreement creates a contractual relationship between any subcontractor and the District. Contractor is responsible for fulfilling all work elements in any subcontracts and payment of all monies due. Contractor is fully responsible to the District for the acts and omissions of its subcontractors and persons directly or indirectly employed by them and shall hold the District harmless from any liability or damages resulting from any subcontract to the extent allowed by law.

19. AUDIT; ACCESS TO RECORDS

Contractor must preserve its books and other records involving transactions related to this Agreement and provide the District, or its duly authorized representatives, access and necessary facilities to inspect and audit those records for five years after the receipt of funds. If an examination or audit is performed, Contractor must continue to maintain all required records until such audit has been completed and all questions arising from it are resolved. Contractor shall refund any payment(s) that are found to not constitute allowable costs based upon an audit examination.

20. BONDS

- (a) **Payment Bond.** A payment bond equal to the Total Compensation is required for fixed price contracts greater than \$200,000. The District may require, in its sole judgment and discretion, a payment bond for fixed price contracts of \$200,000 or less, in which event the bonding requirement shall be disclosed in the solicitation.
- (b) **Performance Bond.** A performance bond equal to the Total Compensation is required for fixed price contracts greater than \$200,000. The District may require, in its sole judgment and discretion, a performance bond for fixed price contracts of \$200,000 or less, in which event the bonding requirement shall be disclosed in the solicitation.
- (c) **Recording.** Bonds shall be recorded in the public records of the county where the Work is located. A certified copy of completed and recorded bonds must be delivered to and accepted by the District prior to commencement of the Work. Bond premiums shall be paid by Contractor. Bonds shall be on the form provided in the Bid Documents and written through a licensed agency that fulfills the requirements of §287.0935, Fla. Stat.
- (d) **Qualification-Management and Strength.** The Surety executing a bond must be rated no less than "Excellent" for both financial strength and issuer credit, with a rating outlook of stable or positive for both and must have a financial size rating of VII or better according to the latest information available from A.M. Best Company, Inc.'s, rating and analysis web site.
- (e) In lieu of the bond, Contractor may submit an alternative form of security in the form of cash, money order, certified check, cashier's check, irrevocable letter of credit, or other security acceptable to the District.

21. CIVIL RIGHTS.

Pursuant to chapter 760, Fla. Stat., Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, pregnancy, or national origin, age, handicap, or marital status.

22. CLEANUP, EQUIPMENT REMOVAL

Upon expiration or termination of this Agreement, Contractor shall restore the worksite to its original condition, except for replacement of vegetation, unless otherwise required by this Agreement. Contractor shall remove from District property and all public and private property all machinery, equipment, supplies, surplus materials, temporary structures, rubbish, and waste materials resulting from its activities. After 20 days, the District may sell or dispose of any materials left at the worksite as it sees fit and deduct the cost of sale or disposal from any amounts due to Contractor. Any revenues obtained shall be applied toward costs incurred by the District, with excess revenues paid to Contractor.

23. COOPERATION WITH THE INSPECTOR GENERAL, PURSUANT TO §20.055(5) FLA. STAT.

Contractor and any subcontractors understand and will comply with their duty, pursuant to §20.055(5), Fla. Stat., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

24. COORDINATION WITH THE DISTRICT AND OTHER DISTRICT CONTRACTORS

- (a) The District may let other contracts in connection with the Work. Wherever work done by the District or another District contractor is contiguous to Contractor's Work, the respective rights of the various interests shall be established by the District so as to secure completion of the Work. Contractor shall arrange its Work so as not to interfere with the District or other District contractors and join its Work to that of others in a proper manner, and in accordance with the intent of the Statement of Work. Contractor shall perform its Work in the proper sequence in relation to that of other District contractors, as may be directed by the District. Contractor shall afford other District contractors reasonable opportunity for introduction and storage of their materials and execution of their work, and shall properly conduct and coordinate its Work with theirs. Contractor shall take into account all contingent work to be done by others and shall not plead its want of knowledge of such contingent work as a basis for delay or non-performance. Contractor shall be liable for any damage it causes to the work performed by other District contractors.
- (b) If any part of the Work depends for proper execution or results upon the work of other District contractors, Contractor shall inspect and promptly report any defects in the other contractors' work that render it unsuitable for Contractor's Work. Failure to so inspect and report shall constitute an acceptance of the other contractors' work as fit and proper for the reception of its Work, except as to defects which may develop in the other contractors' work after execution of the Work.

25. CORRELATION AND INTENT OF DOCUMENTS; QUESTIONS OR ISSUES REGARDING PERFORMANCE OF THE WORK

- (a) This Agreement and all attachments are complementary. What is called for by one is as binding as if called for by all. The intent is to include all labor and materials, equipment, transportation, and incidentals necessary for the proper and complete execution of the Work. Materials or work described in words, which so applied have a well-known technical or trade meaning, shall be held to refer to such recognized standards.
- (b) It is the District's intention to fully assist Contractor in the successful performance of the Work and to respond in a timely manner to questions or issues that arise. Contractor should discuss any questions or issues with the District's Project Manager and communicate such questions or issues in writing when required by this Agreement. The District shall respond through its Project Manager.

26. DAVIS BACON ACT

This contract is federally funded and is subject to the provisions of the Davis-Bacon Act (40 U.S.C. 276a to a-7), as supplemented by the Department of Labor Regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing minimum wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. In addition, construction-related subcontracts of more than \$2,000 must include a provision for compliance with the Davis-Bacon Act.

27. CRIMINAL BACKGROUND CHECK

Contractor hereby gives the District and its designated agents permission to obtain criminal history records from criminal justice or law enforcement agencies in federal, state, county and municipal jurisdictions. The background check may result in termination of this Agreement upon three days' written notice at the District's sole judgment and discretion. Contractor hereby releases the District and its designated agents from any liability for seeking, gathering and using such information, and also releases any other persons, corporations or organizations that furnish such information. Unless specifically exempt by law, any documents obtained by the District and its agents are subject to the Florida Public Records Act and will only be released pursuant to a request made under that Act, in which event Contractor shall be notified of the request. Contractor's social security number shall be used only for the purpose of the criminal background check and is exempt from disclosure under the Florida Public Records Act. See §119.071(5)(a)3, Fla. Stat.

28. DISPUTE RESOLUTION

- (a) **During the course of work.** In the event any dispute arises during the course of the Work, Contractor shall fully perform the Work in accordance with the District's written instructions and may claim additional compensation. Contractor is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by submitting a formal request for additional compensation, schedule adjustment, or other dispute resolution to the District's Project Manager no later than 15 days after the precipitating event. If not resolved by the Project Manager within five business days, the Project Manager shall forward the request to the District's Office of General Counsel, which shall issue a written decision within 15 days of receipt. This determination shall constitute final action of the District and shall then be subject to judicial review upon completion of the Work. **Contractor shall proceed with the Work in accordance with said determination. This shall not waive Contractor's position regarding the matter in dispute.**
- (b) **Invoices.** In the event the District rejects an invoice as improper, and the Contractor declines to modify the invoice, the Contractor must notify the District in writing within ten days of receipt of notice of rejection that the Contractor will not modify the invoice and state the reason(s) therefor. Within five business days of receipt of such notice, if not informally resolved through discussion with the District Project Manager, the Project Manager shall forward the disputed invoice and the Contractor's written response to the District's Office of General Counsel. The matter shall then proceed as described in subsection (a), above.

29. DIVERSITY REPORTING

The District is committed to the opportunity for diversity in its procurement activities, and encourages its prime vendors (contractors and suppliers) to make a good faith effort to ensure that women and minority-owned business enterprises (W/MBE) are given the opportunity for maximum participation as sub-contractors. The District will assist Contractor by sharing information on W/MBEs. Contractor shall provide

with each invoice a report describing the company names for all W/MBEs, the type of minority, and the amount spent with each at all levels. The report will also denote if there were no W/MBE expenditures.

30. DUTY TO INSPECT AND REPORT DEFICIENCIES IN PLANS AND SPECIFICATIONS

- (a) For any Work that is dependent upon conditions at the worksite, Contractor's acceptance of contract award represents and warrants that Contractor has inspected and satisfied itself concerning the nature and location of the Work and general and local conditions, including, without limitation: (1) conditions affecting transportation, disposal, handling, and storage of materials; (2) availability and quality of labor; (3) availability and condition of roads; (4) climatic conditions and seasons; (5) hydrology of the terrain; (6) topography and ground surface conditions; (7) nature and quantity of surface materials to be encountered; (8) equipment and facilities needed preliminary to and during the Work; and (9) all other matters that can affect the Work and the cost thereof. Contractor's failure to acquaint itself with such conditions will not relieve it from its responsibility for properly estimating the time required or cost of performing the Work. Where the District has investigated subsurface conditions, this data may be provided to Contractor or is available upon request. Contractor must either seek clarification concerning the data or assume the responsibility for its interpretation.
- (b) If Contractor discovers hidden or subsurface conditions that differ materially from those normally expected or indicated in the technical specifications, Contractor shall immediately, and before such conditions are disturbed, notify the District in writing of: (1) subsurface or latent physical conditions differing materially from those indicated in the technical specifications, or (2) unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for herein. The District shall promptly investigate the conditions and determine whether they materially differ so as to cause an increase or decrease in Contractor's cost. Where the differing site conditions materially impact Contractor's cost, an equitable adjustment shall be made and the Agreement modified accordingly. No claim will be allowed if Contractor fails to provide the required notice.
- (c) If Contractor in the course of the Work finds any defect in the plans and specifications, including, but not limited to, any discrepancy between the drawings and the physical conditions at the worksite, or any errors or omissions in the drawings or in the layout, as given by points and instructions, it shall immediately inform the District in writing, which shall be promptly verified by the District. Any Work done after such discovery, until authorized, will be done at Contractor's risk as to cost overruns and modifications necessary to correct deficiencies in the Work. To ensure the proper execution of its subsequent Work, Contractor shall measure Work already in place or completed and shall immediately report any discrepancy between the executed Work and the drawings or other specifications.

31. EMPLOYMENT ELIGIBILITY

Contractor must use the United States Department of Homeland Security's E-Verify system ("E-Verify") to verify the employment eligibility of all persons hired by Contractor during the term of this Agreement to work in Florida. Additionally, if Contractor uses subcontractors to perform any portion of the Work (under this Agreement) valued in excess of \$3,000, Contractor must include a requirement in the subcontractor's contract that the subcontractor use E-Verify to verify the employment eligibility of all persons hired by subcontractor to perform any such portion of the Work. Within 30 days of this Agreement's Effective Date, Contractor must provide the District with evidence that Contractor is enrolled in the E-Verify system. Answers to questions regarding E-Verify as well as instructions on enrollment may be found at the E-Verify website: www.uscis.gov/e-verify.

32. FUEL COST ADJUSTMENTS

- (a) Contractor may request fuel cost adjustments no more than once per quarter if the cost of fuel changes, as determined by the fuel cost indices below, by more than 15%. For these purposes, quarters begin on October 1, January 1, April 1, and July 1. Fuel cost adjustments will be based on one or more of the following or upon mutual agreement, alternate equivalent indices; the Producer Price Index Commodity Data (PPI) for **Series Id:** WPU0571; Not Seasonally Adjusted; **Group:** Fuels and related products and power; **Item:** Gasoline; **Base Date:** 8200 and **Series Id:** WPU057303; Not Seasonally Adjusted; **Group:** Fuels and related products and power; **Item:** #2 Diesel fuel; **Base Date:** 8200: <http://data.bls.gov/PDQ/outside.jsp?survey=wp>.
- (b) To calculate an adjustment, take the Preliminary PPI at the time of the adjustment request minus the Preliminary PPI for the Reference Date (the initial Reference Date is the effective date of the contract, subsequently, the date of the most recent adjustment) divided by the Preliminary PPI for the Reference Date, multiplied by the Fuel Cost Percentage (initially, the percentage of cost attributed to fuel on the effective date of the contract; subsequently, the adjusted percentage of cost attributed to fuel based on the most recent adjusted costs), multiplied by the total cost (initially, the total cost on the Effective Date of the contract; subsequently, the most recent adjusted total cost).
- (c) Requests for adjustment shall be submitted to the Project Manager and shall include the data and calculations used to determine the adjustment. The fuel adjustment, if approved, will be effective as of the date the District receives a request that complies with the above.
- (d) The District may impose a fuel cost adjustment based on the above calculations. Such adjustment shall be effective as of the date Contractor receives notice of the adjustment, including the data and calculations used to determine the adjustment. The District reserves the right to withhold an amount reflecting a properly imposed District fuel cost adjustment from payment of any invoice for work performed after the effective date of the adjustment that fails to accurately reflect the adjustment.

33. GOVERNING LAW, VENUE, ATTORNEY'S FEES, WAIVER OF RIGHT TO JURY TRIAL

This Agreement shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. As used herein, "shall" is always mandatory. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state or federal legal proceedings shall be in Orange County; (2) each party shall bear its own attorney's fees, including appeals; (3) for civil proceedings, the parties hereby consent to trial by the court and waive the right to jury trial.

34. INTEREST IN THE BUSINESS OF CONTRACTOR; NON-LOBBYING

Contractor certifies that no officer, agent, or employee of the District has any material interest, as defined in chapter 112, Fla. Stat., either directly or indirectly, in the business of Contractor to be conducted under this Agreement, and that no such person shall have any such interest at any time during the term of this Agreement. Pursuant to §216.347, Fla. Stat., monies received from the District pursuant to this Agreement shall not be used to lobby the Florida Legislature or any other state agency.

35. INDEPENDENT CONTRACTOR

Contractor is an independent contractor. Neither Contractor nor Contractor's employees are employees or agents of the District. Contractor controls and directs the means and methods by which the Work is accomplished. Contractor is solely responsible for compliance with all labor and tax laws pertaining to it, its officers, agents, and employees, and shall indemnify and hold the District harmless from any failure to comply with such laws. Contractor's duties include, but not be limited to: (1) providing Workers'

Compensation coverage for employees as required by law; (2) hiring employees or subcontractors necessary to perform the Work; (3) providing any and all employment benefits, including, but not limited to, annual leave, sick leave, paid holidays, health insurance, retirement benefits, and disability insurance; (4) payment of all federal, state and local taxes, income or employment taxes, and, if Contractor is not a corporation, self-employment (Social Security) taxes; (5) compliance with the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq., including payment of overtime as required by said Act; (6) compliance with the Patient Protection and Affordable Care Act 42 U.S.C. §§ 18001, et seq.; and (7) providing employee training, office or other facilities, equipment and materials for all functions necessary to perform the Work. In the event the District provides training, equipment, materials, or facilities to meet specific District needs or otherwise facilitate performance of the Work, this shall not affect Contractor's duties hereunder or alter Contractor's status as an independent contractor. This paragraph does not create an affirmative obligation to provide any employee benefits not required by law.

36. INSPECTION AND TESTING OF WORK; REJECTION OF WORK AND MATERIALS; TOOLS, PLANT, AND EQUIPMENT; MATERIAL SUBSTITUTION

- (a) **Standards for Quality and Workmanship.** All materials, equipment, and supplies furnished by Contractor for permanent incorporation into the Work shall be new and of the quality standards specified. Unless otherwise specified, all material and workmanship shall meet the requirements in the applicable standards specifications of the American Society for Testing and Materials. If two or more brands, makes of material, devices, or equipment are shown or specified, each should be regarded as the equal of the other. First-calls and the finished product shall be equal to the best-accepted standards of the trade class. The finished product shall be equal to the best-accepted standards of the trade for the category of Work performed. The District's intent is to obtain a high quality job that will operate and function with the lowest possible maintenance costs. Inspection standards will be established to ensure that this objective is achieved.
- (b) **Materials and Equipment Schedules.** The District shall have the right of prior approval for all materials or equipment incorporated into the Work. Within ten days after the date of contract award and before any material or equipment is purchased, Contractor shall submit to the District's Project Manager a complete list of materials or equipment to be incorporated into the Work. The list shall include catalog cuts, diagrams, drawings, and such other descriptive data as may be required. The use of materials or equipment not in accordance with this Agreement may be rejected.
- (c) **Inspection.** The Work and all materials or equipment used therefor are subject to inspection by the District at all times in order to ensure compliance herewith. Upon request, Contractor shall provide samples of the type and quantity of the various materials used in the Work, as determined and directed by the District. The District's Project Manager and inspector(s) shall be provided access to the Work wherever it is in preparation or progress. Contractor shall provide proper facilities for such access and inspection. Construction contractors shall maintain one complete copy of the drawings and specifications for the Work at the worksite, which shall be made available to the District upon request.
- (d) **Re-examination of Work.** The District may order re-examination of questioned Work and, if so ordered, the Work shall be uncovered by Contractor. If such Work is found to be in accordance with specifications, the District will pay the cost of re-examination and replacement. If such Work is found to be not in accordance with specifications, Contractor will pay such cost.
- (e) **Testing**
 - (i) The District may require that materials be tested prior to incorporation in the Work. In some instances it may be expedient to make these tests at the source of supply. Therefore, upon request, Contractor shall furnish the District with information identifying the source of supply before incorporating material into the Work. Upon request, Contractor shall furnish two copies of the manufacturer's certificate of compliance with these specifications covering manufactured items.

All tests performed by a laboratory to ascertain whether the material, as placed, meets the required specification will be paid for by Contractor. This paragraph does not obligate the District to perform tests for acceptance of material or relieve Contractor of its responsibility to furnish satisfactory material.

- (ii) If the specifications, the District's instructions, laws, ordinances, or any public authority require any Work to be specifically tested or approved, Contractor shall give the District's Project Manager timely notice of its readiness for inspection. If inspection is by an authority other than the District's Project Manager, Contractor's Project Manager shall supply the District's Project Manager with 72-hours prior notice of such inspection. Inspections by the District's Project Manager will be made promptly and, where practicable, at the source of supply. If any Work should be covered up without the prior approval of the District's Project Manager, it shall, if required by the District, be uncovered for examination at Contractor's expense.
- (f) **Rejection of Work and Materials.** Contractor shall promptly notify the District of any defective material and shall not incorporate such material into the Work. The District may reject all Work and material that does not conform to this Agreement, which shall be removed and replaced with approved quality material at no additional cost to the District. If the District deems any portion of the Work unsatisfactory, Contractor shall rework those areas so that the total Work is completed in a manner satisfactory to the District. If disputed, Contractor may submit a Change Order, subject to the dispute resolution procedure.
- (g) **Tools, Plant, and Equipment.** If at any time before commencement of or during progress of the Work, tools, plant, or equipment appear to the District to be insufficient, inefficient, or inappropriate to secure the quality of Work or the proper rate of progress, the District may order Contractor to increase its efficiency, to improve its character, or to augment the number of or substitute new tools, plant, or equipment, as the case may be. Contractor shall conform to such order. If Contractor maintains that any such order is not in conformance with this Agreement, is unnecessary, or requires Contractor to incur excessive costs or delays, Contractor may submit a Change Order, subject to the dispute resolution procedure. Failure of the District to make such demand shall not relieve Contractor of its obligation to secure the quality of the Work and the rate of progress necessary to timely complete the Work.
- (h) **Material substitution.** Except where otherwise indicated, whenever a material or a piece of equipment required in the Work is shown in the specifications by using the name of the proprietary product or that of a particular manufacturer or vendor, any material, equipment, device, or article that will in the District's opinion at least equally perform the same duties imposed by the general design, considering quality, workmanship, economy of operation, and suitability for the purpose intended, may be considered "equal" and substituted for the material or piece of equipment originally specified. In the event Contractor desires the District to consider an item for substitution, Contractor shall submit a written request, which shall give all pertinent details and comparisons of the substitute with the item specified. The District will notify Contractor in writing of its acceptance or rejection. In all cases, new material shall be used. Contractor shall pay all costs resulting from inspection or testing of materials or equipment proposed for substitution.

37. LAND AND WATER RESOURCES

Contractor shall not discharge or permit the discharge, directly or indirectly, of any fuels, oils, calcium chloride, acids, insecticides, herbicides, wastes, toxic or hazardous substances, or other pollutants or harmful materials, onto any lands or into any surface or ground waters, including, but not limited to, streams, lakes, rivers, canals, ditches, or reservoirs. Contractor shall investigate and comply with all applicable federal, state, county, and municipal laws concerning toxic wastes, hazardous substances, and pollution of surface and ground waters. If any waste, toxic or hazardous substance, or other material that can cause pollution, as defined in §403.031, Fla. Stat., is dumped or spilled in unauthorized areas, Contractor shall notify the District thereof within one workday and thereafter shall remove the material and restore the area to its original condition. If necessary, contaminated ground shall be excavated and disposed of as directed by the District

and replaced with suitable fill material, compacted and finished with topsoil, and planted as required to re-establish vegetation. All cleanup and disposal costs shall be borne by Contractor.

38. LIENS

Neither final payment nor payment of any part of the retainage shall become due until Contractor delivers to the District releases of all labor and material cost liens arising from Contractor's performance of the Work, including Contractor and any subcontractor(s), and an affidavit by Contractor stating that the releases and receipts include all labor and material costs for which a lien could be filed. If any subcontractor refuses to furnish Contractor a release or a receipt in full, Contractor may furnish to the District a bond satisfactory to the District, indemnifying the District against any such potential lien. If any lien or potential lien remains unsatisfied, the District may discharge the same forthwith and deduct the cost thereof from any amounts due to Contractor. In the event Contractor has been fully paid or the amount of such lien exceeds the amount due to Contractor, Contractor shall refund to the District all monies that the District paid in discharging such lien, including all costs and a reasonable attorney's fee. The discharging of such a lien by the District shall not constitute a waiver of any claims or defenses that Contractor may have against the lienor.

39. NUISANCE

Contractor shall exercise every reasonable means to avoid creating or continuing a public or private nuisance resulting from the Work, including, but not limited to: (1) excessive noise associated with radio or other forms of electronic entertainment for persons at the worksite; (2) dust from construction operations, and (3) the uncontrolled flow of surface waters.

40. ORGANOCHLORINE PESTICIDES

The Lake Apopka North Shore Restoration Area (NSRA) is former agricultural property. Soil samples from the NSRA indicate organochlorine pesticide levels that exceed Florida Department of Environmental Protection's Industrial/Commercial soil cleanup target levels. Contractors working in the NSRA are responsible for taking all appropriate measures to provide for the safety of their employees. Recommended measures should be designed to minimize contact with the soil through engineering controls, which may include: (1) wearing waders or rubber boots and gloves to minimize contact with soil and sediments, (2) washing thoroughly with soap and water after contact with soils or sediments, (3) decontaminating any equipment in contact with soil or sediment through washing with soap and water and (4) using enclosed cabs or dust masks to minimize exposure to dust created by Contractor's activities.

41. OVERTIME

Contractor, with prior written approval of the District, may work overtime, weekends, or holidays at its option, without additional charge to the District for said Work. However, should the District require Contractor to work overtime the District will pay Contractor up to 150% of the worker's hourly rate. No additional amount or surcharge will be paid for the overtime use of equipment. Should Contractor elect to work overtime without prior written authorization of the District, no additional compensation will be due or payable by the District to Contractor for overtime. Contractor may be required to submit payroll information to verify that its workers are receiving overtime premium.

42. PERMITS AND LICENSES; COMPLIANCE WITH LAW

Contractor shall comply with all applicable federal, state and local laws and regulations, including those pertaining to health and safety. Contractor shall include this requirement in all subcontracts. All materials used and work performed must conform to the laws of the United States, the State of Florida and county and

municipal ordinances. Contractor represents and warrants that it is duly licensed to perform the Work in accordance with the laws of the State of Florida and the county or municipality in which the Work is to be performed. For out-of-state contractors, Contractor warrants that it is authorized to do business within the state of Florida and registered with the Secretary of State. Unless otherwise provided in the Statement of Work, the responsibility of the parties for obtaining permits is apportioned as follows:

- (a) The District shall procure all permits required from the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, and the U.S. Army Corps of Engineers.
- (b) Contractor shall procure any permits required by the county or municipality wherein the Work is located.
- (c) Contractor shall:
 - (i) give to the proper authorities all required notices relative to the Work;
 - (ii) obtain and pay for all official permits and any professional or other licenses, code stamps, and inspections that are Contractor's responsibility;
 - (iii) furnish any bonds, security, or deposits required to permit performance of the Work;
 - (iv) until the Work is accepted as substantially complete, comply with all conditions of governmental permits; and
 - (v) resolve any issues resulting from a finding of noncompliance by any governmental agencies, including all costs for delays, litigation, fines, or other costs.

43. PETROLEUM STORAGE TANKS

Any petroleum storage tanks with a capacity of 55 gallons or greater that Contractor brings onto District property must be either double-walled or kept within secondary containment that will contain 110% of the tank volume.

44. PROTECTION OF THE WORK, DISTRICT EQUIPMENT, AND PROPERTY

Contractor is responsible for the proper care of the Work and protecting the Work from damage until final acceptance by the District, whether or not the same has been covered by partial payments. Contractor is solely responsible for all District-owned equipment in its possession, if any. Contractor shall adequately protect and maintain all passageways, guard fences, lights, and other facilities as required by public authority or local conditions. Contractor is responsible for locating and protecting all utilities. Contractor shall conduct the Work so as to minimize damage to existing improvements, and shall restore, as nearly as practical, to its original condition, any such improvements damaged by its operations. In the event of temporary suspension of the Work, or during inclement weather, or whenever the District shall direct, Contractor shall carefully protect the Work from damage. If any Work is damaged due to Contractor's failure to so protect the Work, the loss shall be remedied at Contractor's expense. Contractor shall protect public and privately-owned property, structures, utilities, and work of any kind against damage or interruptions of service resulting from its activities. Contractor shall repair, replace, or restore any damage or loss to any public or private property to the District's satisfaction. Should Contractor fail to perform these obligations, the District may make good any such damage and deduct the cost thereof from Contractor's final payment.

45. PUBLIC RECORDS

- (a) Contractor is responsible for identifying confidential trade secret information as such upon submittal to the District. Notwithstanding any other provision hereof, the District shall not be liable to Contractor for release of confidential information not identified as such upon submittal. If the District receives a public records request that requests information claimed to be confidential by Contractor, the District shall take such steps as are necessary to comply with chapter 119, Fla. Stat., while protecting the confidentiality of

trade secret information. In the event of a dispute as to whether the requested information is a trade secret, Contractor shall be liable for all costs incurred by the District resulting from the dispute, including any court costs and attorney's fees. The calculation of those costs shall not include costs that are charged to the public records requestor.

- (b) Contractor shall comply with Florida Public Records law under Chapter 119, Fla. Stat. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in §119.011(12), Fla. Stat. Contractor shall keep and maintain public records required by the District to perform the services under this Agreement.
- (c) If Contractor meets the definition of "Contractor" found in §119.0701(1)(a), Fla. Stat.; [i.e., an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency], then the following requirements apply:
 - (i) Pursuant to §119.0701, Fla. Stat., a request to inspect or copy public records relating to this Agreement for services must be made directly to the District. If the District does not possess the requested records, the District shall immediately notify the Contractor of the request, and the Contractor must provide the records to the District or allow the records to be inspected or copied within a reasonable time. If Contractor fails to provide the public records to the District within a reasonable time, the Contractor may be subject to penalties under s. 119.10, Fla. Stat.
 - (ii) Upon request from the District's custodian of public records, Contractor shall provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat., or as otherwise provided by law.
 - (iii) Contractor shall identify and ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the District.
 - (iv) Upon completion of the Agreement, Contractor shall transfer, at no cost to District, all public records in possession of Contractor or keep and maintain public records required by the District to perform the services under this Agreement. If the Contractor transfers all public records to the District upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records that are stored electronically must be provided to the District, upon request from the District's custodian of public records, in a format that is accessible by and compatible with the information technology systems of the District.

- (d) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE DISTRICT'S CUSTODIAN OF PUBLIC RECORDS AT:**

**District Clerk
St. Johns River Water Management District
4049 Reid Street
Palatka, Florida 32177-2571
(386) 329-4127
clerk@sjrwm.com**

46. RELEASE OF INFORMATION

Contractor shall not publish or release any information related to performance of this Agreement, or prepare, publish, or release any news or press release in any way related to this Agreement, without prior District review and written consent.

47. REMEDIES FOR NON-PERFORMANCE

- (a) **District Remedies.** The remedies enumerated herein are non-exclusive. In addition to the remedies set forth below, the District may avail itself of any statutory and/or common law remedies not set forth herein. In the event of a breach, the District may terminate this Agreement for cause. Alternatively, the District may allow Contractor to correct the deficiency, or may take such action as is necessary to correct such deficiency through District action or that of a third party. Delay or failure by the District to enforce any right or remedy hereunder shall not impair, or be deemed a waiver of, any such right or remedy, or impair the District's rights or remedies for any subsequent breach of this Agreement.
- (b) **Contractor Correction of Deficiencies.** The District shall provide Contractor with written notice of deficiency. At the District's sole judgment and discretion, the District may afford an opportunity to correct said deficiency, in which event the notice shall specify the time allowed to cure. If Contractor disputes that a failure of performance has occurred, Contractor shall, nevertheless, perform the corrective action and may submit a request for a Change Order subject to the dispute resolution procedure. Unless authorized through a Change Order, the Completion Date shall not be extended in order to correct deficiencies. Contractor shall bear the cost of correcting all work of other contractors that is destroyed, damaged, or otherwise negatively impacted by its corrective action. Failure to take timely corrective action may result in termination for cause or the District pursuing alternative remedies, as provided herein.
- (c) **Alternative Remedies to Correct Deficiency.** If the District determines that it is not in its best interest for Contractor to correct incomplete or damaged Work caused by Contractor's failure of performance, the District may pursue any or all of the following remedies, in whole or in part: (1) accept the Work as is and deduct the reasonable value of the deficient Work from the Total Compensation; (2) complete the Work through the utilization of District employees and deduct the cost thereof from the Total Compensation; (3) contract with a third party to complete the deficient Work and deduct the cost thereof from the Total Compensation.

- (d) **District Technical Assistance.** The District may elect to provide technical assistance to Contractor in order to complete satisfactory performance of the Work. If the District is performing a function that Contractor is required to perform, the District may deduct the cost of providing such technical assistance from the Total Compensation. Prior to providing any such technical assistance, the District shall notify Contractor that it considers such assistance to be above and beyond its duties under this Agreement and that it intends to deduct the cost of providing such assistance from the Total Compensation. Contractor shall not be entitled to reject technical assistance when the District determines that such assistance is necessary to complete the Work.

48. **ROYALTIES AND PATENTS**

Contractor certifies that, to the best of its information and belief, the Work does not infringe on any patent rights. Unless provided otherwise herein, Contractor shall: (1) pay all royalties, patent, and license fees necessary for the Work; (2) defend all suits or claims for infringement of any patent rights, and (3) save and hold the District harmless from loss on account thereof; provided, however, that the District shall be responsible for any such losses when the utilization of a particular process or product of a particular manufacturer is specified by the District. If Contractor obtains information that the process or article so specified is a patent infringement, it shall be responsible for such loss unless it promptly so notifies the District.

49. **SAFETY**

For any Work that is to be performed on premises that are owned or controlled by the District (the Premises), Contractor has the sole and exclusive duty for the safety of the premises. Contractor shall provide and maintain sufficient protection for the safety of its employees and other persons who may utilize the Premises, and prevent damage to District property, materials, and equipment. Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ any unfit person or anyone not skilled in the work assigned. Neither Contractor nor its subcontractors shall allow or cause to be allowed any hunting or any weapons, animals, alcohol, or drugs, on or from the Premises or adjacent property. Contractor employees shall not park their vehicles or store equipment or materials adjacent to roads where it may be a hazard to traffic. A clear distance of at least 30 feet from the edge of the pavement or right-of-way shall be kept free of any obstacles unless otherwise authorized by the District. Contractor shall ensure that only authorized personnel are allowed on the worksite and shall post notices warning both employees and the public of all safety hazards created by Contractor.

50. **SCRUTINIZED COMPANIES**

Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to §287.135, Fla. Stat., the District may terminate this Agreement at its sole option if Contractor is found to have submitted a false certification; or if Contractor is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement. If this Agreement is for more than one million dollars, Contractor certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in §287.135, Fla. Stat. Pursuant to §287.135, Fla. Stat., the District may terminate this Agreement at its sole option if Contractor is found to have submitted a false certification; or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

51. **SUBSTANTIAL COMPLETION; PUNCH LIST**

Contractor shall notify the District when it considers the Work to be substantially complete. "Substantially complete" is the point when the District can beneficially occupy its property and use the Work for its intended purpose, with only minor items remaining in order for the Work to be fully complete. The District shall review the Work and determine whether the Work is substantially complete. If the District agrees that the Work is substantially complete, develop a list of items ("Punch List") required to render the Work complete, satisfactory, and acceptable in all respects. Contractor shall complete the Punch List items by the Completion Date; provided, however, that if the Completion Date is less than 30 days after the date of delivery of the Punch List, the Completion Date shall be extended to 30 days after delivery of the Punch List. Failure to include any corrective work or pending items not yet completed on the Punch List does not alter Contractor's responsibility to complete all construction services required by the Work Order. Upon completion of all Punch List items, Contractor may request payment of any remaining retainage. If the District disputes the completion of any items on the Punch List, it may withhold 150% of the estimated cost of completing any such items and shall return the remainder of the retainage to Contractor. Any disputed matters shall be resolved pursuant to the dispute resolution procedure of this Agreement.

52. SURVEYS; PRESERVATION OF MONUMENTS; POINTS AND INSTRUCTION

- (a) **Surveys.** When necessary to performance of the Work, unless otherwise provided in the Statement of Work, the District will furnish horizontal and vertical control necessary to lay out the Work, including horizontal reference point(s) and a vertical control benchmark within 200 feet of the site. The District will set the horizontal reference point(s) and vertical control only at the beginning of the job. Contractor is responsible for interim staking during the job and all staking and layout work not otherwise furnished by the District. Contractor shall furnish all construction layout of the Work, including layout, centerline, and grade stakes for access roadways. Contractor shall furnish all personnel, equipment, and materials to make such surveys as are necessary to determine the quantity of Work performed. Field notes and computations for estimates shall be verified by the District's Project Manager as to the quantities estimated.
- (b) **Preservation of Monuments.** Contractor shall maintain and preserve all new and existing benchmarks, monuments, markers, reference points, and stakes established by others and/or the District. Should any of the aforesaid be destroyed or damaged by Contractor, the same shall be replaced by Contractor's licensed land surveyor at no cost to the District. Contractor shall be responsible for the cost of any deficiencies in the Work caused by such loss or disturbance.
- (c) **Points and Instructions.** Contractor shall provide reasonable and necessary opportunities and facilities for setting points and making measurements. Contractor shall not proceed until it has made a timely request to the District for, and has received, such points and instructions as may be necessary as the Work progresses. The Work shall be done in strict conformity with such points and instructions.

53. TRENCH SAFETY

In the performance of this contract, Contractor may be requested to supply cost estimates for trench excavation to a depth exceeding five feet. §553.62, Fla. Stat., incorporates the Occupational Safety and Health Administration's excavation safety standards, 29 CFR §1926.650 Subpart P, as the standard. Contractor shall separately estimate the cost of compliance with those standards as required by §553.63, Fla. Stat. Such estimate shall be based on the linear feet of trench to be excavated and shall include written assurance of compliance with those standards and any applicable special shoring requirements.

54. USE OF COMPLETED PORTIONS OF THE WORK

The District shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding the fact that the time for completing the entire Work or such portions may not have expired. Such taking of possession and use will not be deemed an acceptance of any Work not completed. If such possession and use increases the cost of or delays the Work, Contractor shall be entitled to a Change Order for extra compensation, or extension of time, as necessary, to offset the effect of such prior possession and use.

55. WARRANTY

- (a) Contractor warrants that the Work, workmanship and material furnished by Contractor shall be new and of specified quality, shall conform to the requirements of this Agreement, shall be free from defects, and shall be free from any security interest, lien, or other encumbrances. This warranty shall remain in effect for a period of 12 months after completion of the Work, unless otherwise specified herein. Any defective Work, workmanship, or material corrected during the warranty period shall be similarly warranted for 12 months following its correction or for such other period as specified herein. The express warranty set forth herein shall not be exclusive and shall not act as a limitation upon any statutory or other warranty of any kind, express or implied, including any implied warranty of merchantability or fitness for a particular purpose.
- (b) In the event of breach of this warranty, Contractor shall take the necessary actions to correct the breach in the most expedient manner as dictated by then-existing circumstances. All costs incidental to the repair, replacement, redesign, and testing incurred as a result thereof, including the removal, replacement, and reinstallation of equipment in place when the Work was started, shall be Contractor's responsibility. Upon written notification of a breach, Contractor shall promptly send the necessary personnel to the project site to assume responsibility for corrective action. Time is of the essence. Contractor shall be afforded necessary and reasonable access to perform warranty work. If Contractor fails to promptly correct the breach, the District may take corrective action without waiving any other rights or remedies it may have, and Contractor shall reimburse the District for all expenses reasonably incurred in performing such corrective action.

ADDITIONAL PROVISIONS (In Alphabetical Order)

DEFINITIONS

ADDENDA: Written or graphic instruments issued prior to the opening of responses, which make additions, deletions, or revisions to the solicitation or contract documents.

AGREEMENT: The written contract between the District and Contractor covering the Work, which includes all documents attached to this Agreement or incorporated herein by reference. The words "contract" and "Agreement" are synonymous in these documents.

AMENDMENT: Any written change made to the terms and conditions of the Agreement.

BID: The written offer of Respondent (when submitted on the reproduced approved forms) to perform the Work and furnish the necessary materials in accordance with the provisions of this Agreement.

BID BOND: The security furnished with a Bid to guarantee that Respondent will enter into a contract and execute, deliver, and perform all other obligations described in the Invitation for Bids if Contractor receives a Notice of Intent to Award the contract from the District.

BUSINESS DAY: Monday through Friday, excepting those holidays observed by the District – New Years Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving (and Friday), and Christmas Day.

CHANGE ORDER: A written agreement of the parties after the Commencement Date to amend this Agreement so as to modify the Statement of Work or the Total Compensation or provide for an extension of time.

CONTRACTOR: Contractor, its officers, employees, agents, successors, and assigns.

CONTRACTOR'S PROJECT MANAGER: The individual designated by the Contractor to be responsible for overall coordination, oversight, and management of the Work for Contractor.

CONTRACTOR'S SUPERINTENDENT: Contractor's representative who is present during the progress of the Work and authorized to receive and fulfill instructions from the Contractor's Project Manager or the District.

CPM or CRITICAL PATH METHOD: The use of a calculated task duration with no regard for probabilities. A path has no float and is the longest path through the project. A critical path encompasses those project activities that are crucial and cannot be shifted, having a calculated task duration. They are the important activities driving the project. Float belongs to the District.

DELIVERABLES: All Work that is to be performed pursuant to the Statement of Work, in whole or in part, including, but not limited to, all equipment or materials that are incorporated within the Work.

DISTRICT'S PROJECT MANAGER: The District employee designated by the District to be responsible for overall coordination, oversight, and management of the Work for the District.

FINAL RELEASE OF LIENS: The instrument that is to be signed by Contractor and submitted to the District upon completion of the Work showing that all bills from subcontractors have been paid.

INVITATION FOR BIDS: An advertised solicitation for sealed competitive Bids, with the title, date, and hour of the public opening designated. It includes a detailed description of the goods and/or services sought, the date for submittal of Bids, and all contractual terms and conditions.

INSPECTOR: The District's Project Manager or an authorized representative of the District who is assigned to inspect the Work.

PERFORMANCE AND PAYMENT BOND: The security furnished by Contractor and surety in either the form provided or in a form approved by the District as a guarantee that Contractor will perform all of its contractual obligations in accordance with the terms of the Agreement and pay in full all bills and accounts for material, labor, services, and supplies used directly or indirectly in the performing the Work.

PERSON: Any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or capacity, whether appointed by a court or others, and any combination of individuals.

PRINCIPAL: When used in a bid, proposal, or Performance and Payment Bond, the word "principal" means the same as the word "Contractor."

STATEMENT OF WORK: The District's written directions, requirements and technical specifications for completing the Work. Standards for specifying materials or testing that are incorporated therein by reference shall have the same force and effect as if fully set forth therein.

SUBCONTRACTORS: Those persons having a direct contract with Contractor relating to performance of the Work, including one who furnishes material worked into a special design in accordance with the plans or specifications of the Work, but not including one who merely furnishes material.

SURETY: The person bound by the Agreement bond with and for Contractor, and who is primarily liable and engages to be responsible for Contractor's satisfactory performance of the Work and for its payment of all debts pertaining thereto.

TOTAL BID: The total cost to be paid to Contractor for completion of the Work.

TOTAL COMPENSATION: The total funds to be expended pursuant to this Agreement upon satisfactory completion of the Work.

WORK: All labor, materials, equipment, transportation, supporting documentation, and other products, services, or facilities necessary for complete performance of the Agreement

IN WITNESS WHEREOF, the St. Johns River Water Management District has caused this Agreement to be executed on the day and year written below in its name by its Executive Director, or duly authorized designee, and Contractor has caused this Agreement to be executed on the day and year written below in its name by its duly authorized representatives, and, if appropriate, has caused the seal of the corporation to be attached. This Agreement may be executed in separate counterparts, which shall not affect its validity. Upon execution, this Agreement constitutes the entire agreement of the parties, notwithstanding any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. This Agreement cannot be changed by any means other than written amendments referencing this Agreement and signed by all parties.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

CONTRACTOR

By: _____
Michael A. Register, P.E., Executive Director, or designee

By: _____

Typed Name and Title

Date: _____

Date: _____

Attest: _____

Typed Name and Title

- Attachments:
- Attachment A - Statement of Work
 - Attachment B - Insurance Requirements
 - Attachment C - District's Supplemental Instructions (sample)
 - Attachment D - Work Order Authorization (sample)
 - Attachment E -Map of the District's Boundaries
 - Attachment F - Contractor's Hourly Rate Cost Schedule (to be inserted after award)

**ATTACHMENT A — STATEMENT OF WORK
CIVIL WORKS ANNUAL CONSTRUCTION SERVICES**

I. INTRODUCTION

Florida is divided into five water management districts, which are dedicated to the preservation and management of Florida's precious water resources. The St. Johns River Water Management District (District) is responsible for managing ground and surface water supplies in all or part of 18 counties in northeast and east-central Florida.

The District constructs water resource projects to restore, enhance, and manage Florida's water resources. This contract may include, but may not be limited to, the following types of water resource and restoration projects: dewatering, installing erosion control measures, general earthwork, levee construction/repair, water control structure installation and repairs, cast-in-place and pre-cast concrete installation, constructing, repairing and stabilizing roadways/driveways and earthwork stabilization. The work is predominantly located in remote and isolated locations with limited access; areas with high groundwater levels and inundated areas; and soils found in Florida marsh-like environments, especially clay and muck soils.

II. OBJECTIVE

The objective of this contract is to provide water quality improvements, enhancement and restoration of wetland habitat and natural systems, flood protection and flood damage repairs and associated site work improvements to compliment these features.

III. SCOPE OF WORK

All work under this contract shall be performed through Work Orders. There are two types of Work Orders (Type 1/Time and Materials and Type 2/Fixed Price). The District will determine the type of Work Order to be issued for each project. The Contractor shall provide all labor, equipment, and materials necessary to complete all tasks described in the Work Order. The District reserves the right to purchase and provide the Contractor all or part of any materials or equipment to be incorporated in the work via direct purchase, independently of the Work Order.

Prior to award of each Work Order, the selected Contractor shall, if requested, provide a written statement of availability of the equipment and labor necessary to perform the work identified. The District reserves the right to award of each Work Order based on the ability to perform in a timely manner, availability of required equipment, cost of required equipment, past performance on similar work, availability of qualified staff, and other factors deemed critical to the performance of the Work.

IV. TASK IDENTIFICATION

Detailed task identification will be provided with each Work Order.

V. TIME FRAMES AND DELIVERABLES

Project specific time frames and deliverables will be identified with each Work Order.

VI. BUDGET / COST SCHEDULE

A project specific budget will be identified with each Work Order.

ATTACHMENT B — INSURANCE REQUIREMENTS

Contractor shall acquire and maintain until completion of the Work the insurance coverage listed below, which constitutes primary coverage. Contractor shall not commence the Work until the District receives and approves Certificates of Insurance documenting required coverage. Contractor's General Liability policy shall include Endorsement CG 20 10 04 13, or equivalent, naming the St. Johns River Water Management District (the "District") as Additional Insured. All required policies shall include: (1) endorsement that waives any right of subrogation (Endorsement CG 24 04 05 09, or equivalent) against the District for any policy of insurance provided under this requirement or under any state or federal worker's compensation or employer's liability act; (2) endorsement to give the District no less than 30 days' notice in the event of cancellation or material change. Certificates of Insurance must be accompanied by copies of the requested endorsements.

Any deductibles or self-insured retentions above \$100,000 must be declared to and approved by the District. Approval will not be unreasonably withheld. Contractor is responsible for any deductible or self-insured retention. Insurance must be placed with insurers having an A.M. Best rating of A-V or greater. District receipt of insurance certificates providing less than the required coverage does not waive these insurance requirements.

- (c) **Workers' Compensation Insurance.** Workers' compensation and employer's liability coverage, including maritime workers' compensation, if applicable, in not less than the minimum limits required by Florida law. If Contractor claims an exemption from workers' compensation coverage, Contractor must provide a copy of the Certificate of Exemption from the Florida Division of Workers' Compensation for all officers or members of an LLC claiming exemption who will be participating in the Work. In addition, Contractor must provide a completed District "Affidavit (Non-Construction)" for non-construction contracts. Contractor is solely responsible for compliance with any Federal workers' compensation laws such as Jones Act and USL&H Act, including any benefits available to any workers performing work on this project.
- (d) **General Liability.** Commercial General Liability Insurance on an "Occurrence Basis," with limits of liability for each occurrence of not less than \$1,000,000 for personal injury, bodily injury, and property damage, with a(n) project aggregate of \$2,000,000. Coverage shall include: (1) contractual liability, (2) products and completed operations, (3) independent contractors, and (4) property in the care, control, or custody of the Contractor. Extensions shall be added or exclusions deleted to provide the necessary coverage.
- (e) **Automobile Liability.** \$500,000 combined single limit.
- (f) **"Builder's Risk" Property Insurance.** Coverage amount shall be sufficient to insure the completed value of new project construction.
- (g) **Umbrella Policy.** Minimum limits of \$2,000,000 per occurrence.
- (h) **Pollution/Environmental Impairment Liability Coverage**
 - (i) Contractor is responsible to provide this coverage through its automobile liability, general liability or a separate policy if it transports or stores fuel on a vehicle, trailer or piece of equipment.
 - (ii) Contractor is responsible to provide this coverage through its general liability or a separate policy if it has a fuel storage tank stationed on the worksite.

Policy Limits. Not less than \$1,000,000 per claim, personal injury, bodily injury, and property damage and remediation costs.

ATTACHMENT C — DISTRICT’S SUPPLEMENTAL INSTRUCTIONS (sample)

DISTRICT SUPPLEMENTAL INSTRUCTIONS #

DATE:

TO: _____

, _____

FROM: Elwin Boynton, Project Manager

CONTRACT NUMBER: 37848

CONTRACT TITLE: Annual Civil Works Construction Contract 2022-2025

The Work shall be carried out in accordance with the following supplemental instruction issued in accordance with the Contract Documents without change in the Contract Sum or Contract Time. Prior to proceeding in accordance with these instructions, indicate your acceptance of these instructions for minor adjustments to the work as consistent with the Contract Documents and return to the District’s Project Manager.

1. CONTRACTOR’S SUPPLEMENTAL INSTRUCTIONS:
2. DESCRIPTION OF WORK TO BE CHANGED:
3. DESCRIPTION OF SUPPLEMENTAL INSTRUCTION REQUIREMENTS: .

Contractor’s approval: (choose one of the items below):

Approved: _____ Date: _____

(It is agreed that these instructions shall not result in a change in the Total Compensation or the Completion Date.)

Approved: _____ Date: _____

(Contractor agrees to implement the Supplemental Instructions as requested but reserves the right to seek a Change Order in accordance with the requirements of the Agreement.)

Approved: _____ Date: _____
Elwin Boynton, District Project Manager

Acknowledged: _____ Date: _____
Amy Lucey, District Senior Procurement Specialist

c: Contract file
Financial Services

ATTACHMENT D — WORK ORDER (sample)

WORK ORDER AUTHORIZATION

Contract number: _____ **Contract name:** _____

Work Order No.: _____ **Project name:** _____

Work Order encumbrance number: _____

Work Order funding limit: \$ _____

To:

Annual funding limit (FY ____)		\$
Prior total	\$	
Current W.O. amount	\$	
Total amt. to date	\$ 0.00	
Balance available		\$ 0.00

From: Elwin Boynton, Project Manager

Type of Work Order:

- Type 1 (hourly)
- Type 2 (fixed price) \$ _____
- Type 3 (not to exceed) \$ _____

Work Order Manager (if appropriate):

Name: _____
 Phone: _____
 Email: _____

Description of Work: _____ All work shall be accomplished in accordance with the attached Statement of Work, Attachment A. Invoices shall reference the Contract number, Work Order number, and Work Order Encumbrance number; include the information required; and be submitted _____ to the Director, Office of Financial Services.

Special note: _____

Commencement Date: Work is authorized to proceed (CA: use one of the following) on the date this Work Order is executed by the District on _____. **Commencement of the work authorized herein prior to execution of this Work Order by Contractor constitutes acceptance of all terms and conditions of this Work Order.** Payment will not be made until this Work Order has been signed by Contractor and received by the District.

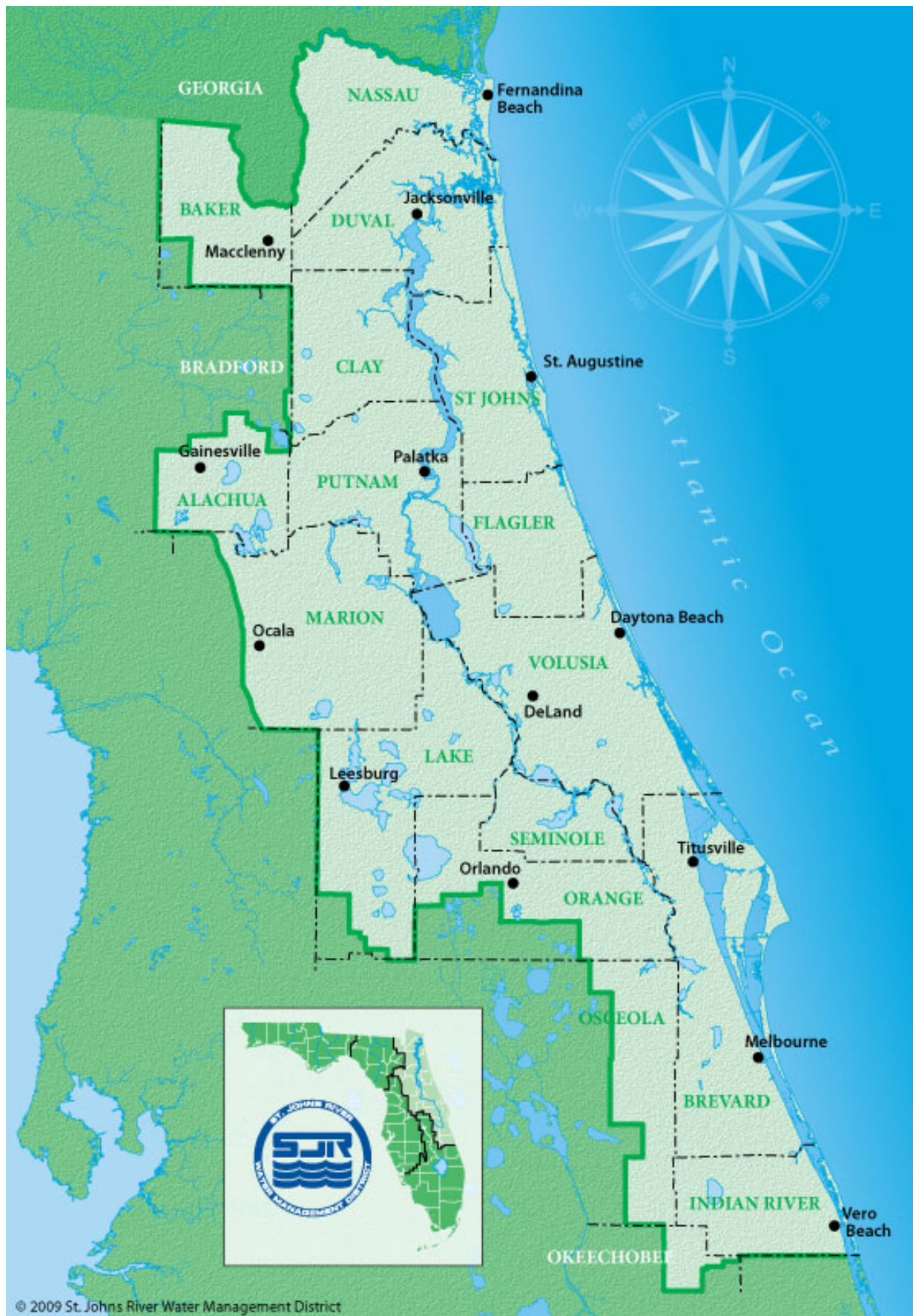
Completion Date: All work pursuant to this Work Order shall be completed by _____ (Completion Date). The Completion Date, if extended pursuant to the above-referenced contract governing this Work Order, shall not be extended beyond the current District fiscal year, ending on September 30, 20___. All invoices shall be submitted pursuant to the above-referenced contract and are subject to a ten percent penalty if submitted later than October 30, 20__.

 District Date

Acceptance of terms and conditions:

 Contractor Date

ATTACHMENT E- MAP OF THE DISTRICT'S BOUNDARIES



© 2009 St. Johns River Water Management District

ATTACHMENT F - CONTRACTOR'S HOURLY RATE COST SCHEDULE

(To be inserted after award)