

## CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 02/09/2022

Contract/Lease Control #: C22-3156-WS

Procurement#: NA

Contract/Lease Type: AGREEMENT

Award To/Lessee: GREEN ENERGY CONTRACTING

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 02/01/2022

Expiration Date: UNTIL ACCEPTANCE OF MAIN

Description of: ROYAL ESTATES FORCE MAIN AGREEMENT

Department: WS

Department Monitor: LITRELL

Monitor's Telephone #: 850-651-7172

Monitor's FAX # or E-mail: JLITRELL@MYOKALOOSA.COM

Closed:

Cc: BCC RECORDS

**INFRASTRUCTURE AGREEMENT  
FOR THE ROYAL ESTATES FORCE MAIN**

This INFRASTRUCTURE AGREEMENT (the "Agreement") is entered into this 1<sup>st</sup> day of February, 2022, by and between Okaloosa County, Florida, through its Board of County Commissioners (the "County") and Green Energy Contracting (the "Property Owner") for the purpose of establishing the wastewater infrastructure improvements necessary for a certain development located in Okaloosa County, Florida.

**WITNESSETH:**

**WHEREAS**, the Property Owner is constructing "Royal Estates" (the "Project"), a proposed subdivision of approximately sixty-nine (69) lots in the Okaloosa County service area, generally located east of Okaloosa Lane and north of Interstate 10. The County has issued a development order for the Project; and

**WHEREAS**, all wastewater from the Project was approved to manifold into Okaloosa County Water and Sewer's ("OCWS") existing 8" force main leaving Okaloosa Lane Lift Station; and

**WHEREAS**, the Okaloosa Lane Lift Station was in need of major capacity improvements to support future developments. Rather than updating older infrastructure, OCWS coordinated with several developers on cost-sharing agreements to design and construct a new lift station ("Shoal River Landing Lift Station") to replace the Okaloosa Lane Lift Station; and

**WHEREAS**, Okaloosa Lane Lift Station is currently out of service and the new Shoal River Landing Lift Station is online; and

**WHEREAS**, when the Shoal River Landing Lift Station is running, it consumes the allowable pressures in the existing force main and therefore, the approved manifold design for the Project would not work. If the approved manifold was constructed, the allowable pressure in the force main would be exceeded; and

**WHEREAS**, rather than the manifold as originally designed and permitted, the Project will require a new 4" force main from the Project property to an existing manhole in the Shoal River Landing Subdivision. The wastewater will then gravity into the Shoal River Lift Station and be pumped to the Jerry D Mitchem WRF; and

**WHEREAS**, this Agreement extends OCWS approval to the Project for use of the new Shoal River Landing Lift Station Force Main in lieu of the previously approved Okaloosa Lane Lift Station manifold; and

**WHEREAS**, the new 4" Force Main will be approximately 5,000 feet, of which, 2,500 feet will be open cut or bored and the remaining could be placed in the abandoned 8" force main between Okaloosa Lane Lift Station and the Shoal River Landing Subdivision; and

**WHEREAS**, the parties desire to work collaboratively to establish a cost share agreement for the design and construction of the new 4" Force Main. The parties desire to enter into this Agreement to establish the respective rights and obligations of the Property Owner and the County in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, the benefits to the County as a result of entering into this Agreement are unique to the particular circumstances of this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the Property Owner and the County enter into this Agreement and do hereby agree as follows:

#### **ARTICLE I. RECITALS**

The Recitals stated above are an integral part of this Agreement and are incorporated herein by reference as if fully set forth herein.

#### **ARTICLE II. DEFINITIONS**

- 2.1 **“County”** means Okaloosa County, a political subdivision of the State of Florida.
- 2.2 **“Force Main”** means the proposed 4” force main that will be designed and constructed from the Project to the Shoal River Landing Subdivision.
- 2.3 **“Maintenance”** means servicing, support, and upkeep of infrastructure.
- 2.4 **“OCWS”** means Okaloosa County Water & Sewer, the water & sewer utility and an enterprise department of the County; all payments from the County will be made through the enterprise department’s budget. All covenants, agreements, and obligations of OCWS provided herein shall be jointly and severally covenants, agreements, and obligations of the County.
- 2.5 **“Project”** means the proposed 69-lot subdivision and all supporting uses and amenities.
- 2.6 **“Property Owner”** means Green Energy Contracting and its lawful successors in title and interest.
- 2.7 **“Right-of-Way”** means the area which may be dedicated to the County or such other governmental entity allowing access for public works, utilities, and public access, or to the community association for members’ use and access.

#### **ARTICLE III. CONDITIONS OF THE INFRASTRUCTURE AGREEMENT**

##### **3.1 Design of Force Main – County Responsibilities.**

- 3.1.1 The County shall provide all survey, permitting, design, and construction inspection services for the proposed 4” Force Main.
- 3.1.2 The County shall pay all costs and expenses related to the survey, permitting, design, and construction inspection services for the Force Main.
- 3.1.3 The County staff shall coordinate with the Property Owner’s engineering consultant during the Force Main design process for coordination of tie-ins.

##### **3.2 Construction of Force Main – Property Owner Responsibilities.**

- 3.2.1 The Property Owner shall purchase materials and construct the Force Main in accordance with the design plans and permits. The Property Owner shall also be responsible for all testing and passing final County inspection. During construction, the County will provide construction inspection services and will produce a survey grade as-built drawing.

3.2.3 The County will not execute the Florida Department of Environmental Protection (FDEP) Water and Sewer Clearance Application for the Project until the Force Main has been completed and accepted by the County.

### 3.3 Stub-Outs and Mains.

3.3.1 The Property Owner will design the appropriate stub-outs and mains within the Project property limits and the Okaloosa Lane Right-of-Way. The County will coordinate with the Property Owner's engineering consultant during design to verify tie-in locations.

3.4 Timing of design and construction. Once the Agreement has been signed by the Board of County Commissioners, OCWS will begin survey work and execute a Task Order for engineering services to begin the design. The timeframe for surveying, design, and permitting should be approximately 5 months. Once the design plans are considered 90%, OCWS will submit for permits and provide the plans to the Property Owner. In addition, all parties agree to fast-track the design and construction of the Force Main, as much as possible.

## ARTICLE IV. AGREEMENT AND COVENANT

4.1 Assignment. This Agreement shall be assignable by the Property Owner to others as to this Force Main and shall be binding upon, and inure to the benefit of, all heirs, successors, and assigns of the parties hereto.

### 4.2 Default.

4.2.1 To the extent that the Property Owner fails to perform any of the actions or requirements contained in this Agreement, the County shall provide written notice to the Property Owner of their failure to comply with the terms of this Agreement. Within thirty (30) days after the Property Owner's receipt of such written notice, and in the event that the Property Owner fails to cure such failure within thirty (30) days after receipt of such notice, the County will not sign the FDEP Water and Sewer Clearance Application for the Project until the Force Main has been completed and accepted by the County. Furthermore, the County shall suspend and hold in abeyance all issuance of any building permits for the Project until the failure is cured. At such time as the Property Owner cures the performance failure, the County shall resume all review and processing of building permits.

4.2.2 To the extent that the County fails to perform any of the actions or requirements contained in this Agreement, the Property Owner shall provide written notice to the County identifying the nature of such default. If the County fails to cure within thirty (30) days after receipt of such written notice (other than obligations that cannot reasonably be cured within such thirty (30) day period in which event the cure period shall automatically be extended a reasonable period of time to allow a cure), then the Property Owner shall be entitled, at its option, to pursue all rights and remedies provided at law and in equity.

4.3 Notice. Any notice required or desired to be given to any party under this Agreement shall be in writing and shall be either (i) sent by certified United States Mail, return receipt requested, (ii) sent by a nationally recognized overnight delivery service, or (iii) sent by electronic mail, provided a copy of any electronic mail notice is also sent by one of the other foregoing means. All notices to either party shall be delivered to the following address provided either party may change such address by delivering notice to the other party in accordance with the provisions of this paragraph:

**As to the Property Owner:**

Patrick Davis, Manager  
Green Energy Contracting  
1305 Highway 90 West  
Holt, Florida 32564  
Email: [patrickd@gecontracting.net](mailto:patrickd@gecontracting.net)

**As to the County:**

Jon Kanak, Engineering Manager  
Okaloosa County Water & Sewer  
1804 Lewis Turner Blvd, Suite 300  
Fort Walton Beach, FL 32547  
Email: [jkanak@myokaloosa.com](mailto:jkanak@myokaloosa.com)

**And a copy to:**

Lynn M. Hoshihara  
County Attorney  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308  
Email: [lhoshihara@myokaloosa.com](mailto:lhoshihara@myokaloosa.com)

All notice shall be deemed given upon receipt or upon the date such receipt is refused by the party receiving such notice.

4.4 Amendment. This Agreement shall only be amended by written amendment properly executed by all parties hereto. No oral modifications will be effective or binding.

4.5 Effective Date and Termination. The Effective Date for this Agreement shall be the date on which this Agreement is recorded by Okaloosa County in the public records of Okaloosa County, Florida (the "**Effective Date**"). This Agreement shall remain in effect until the County accepts the Force Main.

4.6 Recordation. The County shall record this Agreement in the Public Records of Okaloosa County, Florida. If this Agreement is amended, canceled, modified, or extended, the County shall also record such action in the public records of Okaloosa County.

4.7 Construction. This Agreement and the rights and obligations of the parties hereunder shall be interpreted, governed by, construed under, and enforced in accordance with the applicable laws of the State of Florida, and the ordinances, rules, and regulations of Okaloosa County, and any amendments thereto in effect as of the Effective Date of this Agreement. The parties hereby consent to the sole and exclusive jurisdiction and venue for any action relating to the construction, interpretation, or enforcement of this Agreement to be in the state courts of Okaloosa County, Florida.

4.8 Entire Agreement. This Agreement contains the entire understanding between the parties, and the parties agree that no representation were made by or on behalf of either that is not contained in this Agreement, and that in entering into this Agreement neither relied upon, or was entitled to rely upon, any representation not herein specifically set forth.

4.9 Severability. If any section, phrase, sentence, or portion of this Agreement is, for any reason, held to be invalid by any court of competent jurisdiction, such section, phrase, sentence, or portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the

remaining portions hereof.

4.10 Waiver and Release. For and in consideration of the mutual agreements set forth herein, the Property Owner agrees the terms and conditions of this Agreement are reasonable under the totality of the circumstances, and the Property Owner for themselves, and on behalf of their successors, assigns or trustees, and anyone claiming by, through or under any of them, do hereby fully waive, release, and forever discharge Okaloosa County from and against any claims for takings, wrongful exaction, inverse condemnation, regulatory takings, U.S.C. Section 1983, or claims under Chapter 70, Florida Statutes, arising out of or resulting from the terms and conditions hereof. The Property Owner acknowledges and agrees that the Property Owner's agreement to this release is a material inducement to Okaloosa County to enter into this Agreement.

4.11 Indemnification.

4.11.1 The Property Owner shall indemnify, defend (by counsel reasonably acceptable to Okaloosa County), protect, and hold harmless Okaloosa County and its officers, employees, and agents from and against any and all claims, demands, actions, causes of action, suits, liabilities, penalties, forfeitures, damages, losses, and expenses whatsoever (including, without limitation, reasonable attorneys' fees, costs, and expenses incurred during negotiation, through litigation and all appeals therefrom) (collectively "Claims") arising out of or resulting from any negligent act or omission of the Property Owner, or the Property Owner's engineers, designers, contractors, subcontractors, material suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

4.11.2 To the extent permitted by law, and without waiving its sovereign immunity, the County shall indemnify, defend (by counsel reasonably acceptable to the Property Owner), protect, and hold harmless the Property Owner and its officers, employees, and agents from and against any and all Claims arising out of or resulting from any negligent act or omission by the County, or the County's engineers, designers, contractors, subcontractors, material suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

The provisions of this Section 4.11 shall survive for three (3) years following the completion of the construction of the Force Main.

4.12 Authority of Signatory. Each of the signatories hereto individually represents and warrants that he or she has full right and authority to execute this Agreement on behalf of the party named herein, and that this Agreement is a valid and binding obligation of such party, subject to its terms.

4.13 Estoppel Affidavit. Each party agrees within fifteen (15) days after written notice from the other party to deliver a written statement which may be relied upon by the requesting party or any transferee or mortgagee of the requesting party's interest herein, setting forth whether or not the requesting party has fully complied with the provisions hereof, and if not, setting forth in reasonable detail the nature of the violations. Failure to deliver such statement within such fifteen (15) day period shall be conclusive evidence that the requesting party has fully complied with the provisions hereof as of the date the request was made.

4.14 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same original, and the execution of separate counterparts by parties hereto shall bind the parties hereto as if they had each executed the same counterpart. The parties agree that this Agreement shall be deemed validly executed and delivered by a party if a party executes this Agreement and delivers a copy of the executed Agreement to the other party by electronic mail.

4.15 Convenience Only. The section, paragraph, and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

4.16 No Joint Venture. Nothing contained in this Agreement shall constitute the Parties as joint venturer, partner, or agent of one another, or render a Party liable for any debts, obligations, acts, omissions, representations, or contracts of another.

IN WITNESS WHEREOF, the parties have set their hands and seals this 1<sup>st</sup> day of February, 2022.

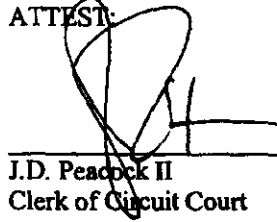
OKALOOSA COUNTY, FLORIDA



Mel Ponder  
Chairman, Board of County Commissioners



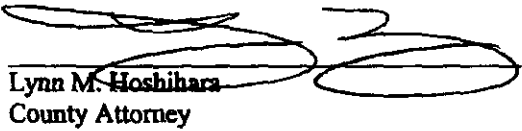
ATTEST:



J.D. Peacock II  
Clerk of Circuit Court



APPROVED AS TO LEGAL FORM:



Lynn M. Hoshihara  
County Attorney



**PROPERTY OWNER**

**Green Energy Contracting**

By: Patrick Davis, Manager

By: [Signature]  
Patrick Davis, its Manager

WITNESSES:

[Signature]  
WITNESS ONE SIGNATURE

Gregory M. Bondurant  
WITNESS ONE PRINTED NAME

[Signature]  
WITNESS TWO SIGNATURE

Joshua K. Simmons  
WITNESS TWO PRINTED NAME

STATE OF Florida  
COUNTY OF Okaloosa

SWORN TO and subscribed before me this 26 day of January, 2022 by

Patrick S Davis in his or her capacity as President of Green Energy Contracting. Such person(s) (Notary Public must check applicable box):

is/are personally known to me.  
 produced a current driver license(s).

produced \_\_\_\_\_ as identification.  
(NOTARY PUBLIC SEAL)

Teresa D. Wise  
Notary Public  
Teresa D. Wise

(Printed, Typed or Stamped Name of Notary Public  
Commission No.: HH 142932  
My Commission Expires: June 16, 2025

