

## CAPITAL CONSTRUCTION AGREEMENT

### Projects costing more the \$200,000

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Anderson Columbia Co. Inc., hereinafter referred to as "Contractor" doing business at P.O. Box 1829, Lake City, FL 32056 and ALACHUA COUNTY, FLORIDA, a political subdivision and Charter County of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County":

#### WITNESSETH:

That the Contractor, for the consideration hereinafter set out, hereby agrees with the County as follows:

- I. **THE WORK.** That the Contractor shall furnish all labor, material, equipment, apparatus and the services covered by the Specifications by the date specified in the contract documents and specifications for Bid #14-490, Project No: 6362, "CR 172 Milling and Resurfacing" and dated August 26, 2013, hereinafter referred to as "Contract Documents and Specifications", all incidental and necessary work thereto. Receipt of the Contract Documents and Drawings are herein acknowledged and made a part of the Contract, the same as though they were set forth at length herein.
- II. **CONTRACT PRICE.** That the County hereby agrees to pay to the Contractor for the faithful performance of The Work in this Agreement, subject to additions and deductions, as provided in the Contract Documents and Specifications the sum of seven million six thousand two hundred forty-one DOLLARS and seven CENTS (\$ 7,006,241.07). (**Contract Price**)
- III. In order to efficiently and timely address any unknown or unanticipated conditions that are within the scope of the required Work and are otherwise reimbursable without duplication as a cost of the work, but excluding all items that are to be reimbursed under the Contract Price, the parties have agreed to establish a contingency within in an amount not-to-exceed amount of five hundred thousand DOLLARS (\$500,000). (Contingency)
- IV. Contingency funds shall be used to cover costs that may result from incomplete design and unanticipated costs that arise during construction that are not identified by the construction documents. Contractor shall not proceed with any portion of the Work which it intends to charge against this contingency without first obtaining County's express written authorization to proceed. The Contractor acknowledges and agrees that any work which is to be charged against the contingency allowance that does not receive such prior written approval from the County shall be deemed to be part of Contractors work compensated within the Contract Price and not chargeable against the Owner's Contingency Allowance. The Owner reserves the right, at its sole discretion, to withhold its consent on contingency

expenditures. Further, any contingency expenditure becomes part of the Contract Documents and is incorporated by reference herein. Unused contingency remaining at the end of the job will be credited from the Contract Price. Construction Manager has no entitlement to any portion of any unused contingency.

V. **GENERAL CONDITIONS**

- A That it is mutually agreed between the parties hereto that if, at any time after the execution of this agreement and the surety bond hereto attached for its faithful performance and payment, the County shall deem the surety or sureties upon such bond to be unsatisfactory, or if, for any reason, such bond ceases to be adequate to cover the performance of the work the Contractor shall, at its own expense, within five (5) days after the receipt of notice from the County to do so, furnish an additional bond or bonds in such form and amount, and with surety or sureties as shall be satisfactory to the County. In such event, no further payment to the Contractor shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in a manner and form satisfactory to the County.
- B That it is agreed by both parties hereto that progress payments and final payment for work performed, determined by the County's Project Representative, will be made in accordance with the provisions as stipulated in the Contract Documents and Specifications. It is agreed that 10% of the amount earned through each progress payment as set forth in the Contract Documents and Specifications will be withheld until the Project reaches 50% completion. For purposes of this project, 50% completion is defined as complete by the Contractor and acceptance by the County of the SP 12.5 structural course. Once 50% completion is reached the Contractor may request that the County shall pay up to one half of the retainage then held by the County for the properly completed work. If the County does not dispute any services or payment, the County will make such payment. Furthermore, once 50% completion is reached, the County shall only retain 5% of each progress payment.
- C Within 30 days of substantial completion of the Project as defined in Section E-03, 1-3 of the Contract Documents, the Contractor and County will develop a list (The List) of items required to render complete, satisfactory and acceptable the construction services required herein. County will provide a first draft of the List within forty five (45) days of notice of substantial completion. Contractor will notify the County of acceptance or of any changes requested within fourteen (14) days of receipt. The List developed does not relieve the Contractor of the responsibility for corrective work or for pending items not yet completed for the Project and any items that are identified after development of The List that are required to correct or complete the Project remain the responsibility of the Contractor.
- D If the county fails to develop the list in the time specified, the Contractor may request payment for all retainage held by the County. If the Contractor fails to cooperate with the County in developing The List, or obligations under The List, the County is not obligated to pay the retainage.

- E The County shall not be obligated to make payment to the Contractor for amounts that are the subject of a good faith dispute or a claim brought pursuant to §255.05, Florida Statutes.
- F Once all items on The List have been completed, the Contractor may request the remaining retainage from the County. In cases of a dispute as to completion of an item on the List, the County may withhold and amount not to exceed 150% of the total cost to complete disputed items.
- G General Terms and Conditions as found in the referenced Project Manual are attached hereto as Exhibit "1".

#### **IV. CONTRACT TIME AND DAMAGES**

- A It is agreed by both parties that time is of the essence for the completion of this project. The Contract Time shall as set forth within the issuance of a Notice to Proceed to the Contractor by the County and will be substantially complete within 300 calendar days as set forth in the issuance thereof with final completion within 30 calendar days thereafter.
- B Inasmuch as failure to complete the work within the time herein fixed will result in substantial injury to the County and whereas damages arising from such failure cannot be calculated with any degree of certainty, it is hereby agreed that if such work is not substantially completed as herein defined or within such further time, if any, as shall be allowed for such performance of substantial completion in accordance with the provisions of this Agreement, the Contractor shall pay the County as liquidated damages and not as a penalty the sum specified in Section B 12.6 of the Contract Documents and Specifications per day for each and every calendar day after the date fixed for such completion for the project.
- C Inasmuch as failure to complete the work within the time herein fixed will result in substantial injury to the County and whereas damages arising from such failure cannot be calculated with any degree of certainty, it is hereby agreed that if such work is not finally completed as herein defined or within such further time, if any, as shall be allowed for such performance of final completion in accordance with the provisions of this Agreement, the Contractor shall pay the County as liquidated damages and not as a penalty the sum specified in Section B 12.6 of the Contract Documents and Specifications per day for each and every calendar day after the date fixed for such completion for the project.

#### **V. RELEASE OF LIEN**

- A It is agreed that when all work contemplated by this Agreement has been completed and has been inspected and approved by the County or the County's authorized representatives, the Contractor shall furnish to the County the Contractor's Final Affidavit and Release of Lien in the form provide in the Project Manual or Bid Specifications. The contractor shall provide a Release of Liens from every subcontractor, materiel man and supplier that has provided services or materials to the

Project in the form provide in the Project Manual or Bid Specifications or on a form acceptable to the County.

**VI. INCORPORATION BY REFERENCE OF SPECIFICATIONS AND GENERAL CONDITIONS**

- A Receipt of the Contract Documents and Specifications entitled the "PROJECT MANUAL" are herein acknowledged and made a part of the Agreement the same as though they were set forth at length herein. The general conditions are incorporated herein.
- B In cases of discrepancy, the governing order of the documents is as follows:
  - 1. Amendments and Change orders
  - 2. Contract
  - 3. Special Provisions
  - 4. Technical Special Provisions
  - 5. Plans
  - 6. Developmental Specifications
  - 7. Supplemental Specifications
  - 8. Standard Specifications

**VII. INDEMNIFICATION**

- A To the maximum extent permitted by Florida law, the Contractor shall defend, indemnify and hold harmless the County and its officers and employees from any and all liabilities, claims, damages, penalties, demands, judgments, actions, proceedings, losses or costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, whether resulting from any claimed breach of this Agreement by the Architect or from personal injury, property damage, direct or consequential damages, or economic loss, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Architect or anyone employed or utilized by the Contractor in the performance of this Agreement.
- B The duty to defend under this Article is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Contractor, the County and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to the Contractor. The Contractor obligation to indemnify and defend under this Article will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the County or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.
- C This obligation shall in no way be limited in any nature whatsoever by any limitation on the amount or type of Contractor insurance coverage. This indemnification provision shall survive the termination of the Contract between the County and the Contractor.

- D In any and all claims against the County or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts or employee benefit acts.
- E Nothing contained herein shall constitute a waiver by the County of sovereign immunity or the provisions or limits of liability of §768.28, Florida Statutes.

VIII. **INSURANCE** Throughout the term of this project, the Contractor shall provide insurance of the types and in the amounts set forth in the Contract Documents and Specifications. The Contractor shall also require any subcontractors to provide insurance as set forth in the Contract Documents and Specifications.

IX. **SEVERABILITY** It is understood and agreed by the parties to this Agreement that if any of the provisions of the Agreement shall contravene, or be invalid under the laws of the State of Florida, such contravention or invalidity shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.

X. **AMENDMENT** This Agreement may be amended by mutual written agreement of the parties hereto. Further, this Agreement, including without limitation all changes in the maximum indebtedness, scope of services, time of completion, and other material terms and conditions, may be changed only by such written amendment.

XI. **INDEPENDENT CONTRACTOR** In the performance of this Agreement, the Contractor will be acting in the capacity of an independent Contractor, and not as an agent, employee, partner, joint venture, or associate of the County. The Contractor shall be solely responsible for the means, methods and techniques, sequences and procedures utilized by the Contractor in the full performance of this Agreement. Neither Contractor nor anyone employed by Contractor shall represent, act, purport to act, or to be deemed to be the agent, representative, employee or servant of the County.

XII. **CHOICE OF LAW** The laws of the State of Florida shall govern this Agreement and the duties and obligations stated within this Agreement. Venue shall be in Alachua County.

XIII. **COMPLETE AGREEMENT** This Agreement contains the sole and entire

agreement between the County and the Contractor and supersedes any other written or oral agreements between them not incorporated herein.

XIV. **NON WAIVER** The failure of any party to exercise any right in this agreement will not waive such right in the event of any further default or non compliance.

XV. **SUCCESSORS AND ASSIGNS** The Contractor shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the County. Subject to the provisions of the preceding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County, nor shall it be construed as giving any right or benefit hereunder to anyone other than the County or the Contractor.

XVI. **NO THIRD PARTY BENEFICIARIES** Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed for the uses and purposes herein expressed on the day and year first above written.

**ALACHUA COUNTY, FLORIDA BOARD OF COUNTY COMMISSIONERS**

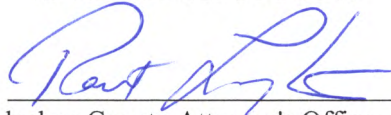
BY: \_\_\_\_\_

**CHAIR**

Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM



Alachua County Attorney's Office

\_\_\_\_\_  
J. K. Irby, Clerk  
(SEAL)

**ANDERSON COLUMBIA CO. INC:**

ATTEST: (by corporate officer)

By: B.P.S.  
(Signature)

Print/Type: Brian P. Schreiber  
(Name)

Title: Secretary

By: E. Williams  
(Signature)

Print/Type: E. Tony Williams, Jr  
(Name)

Title: Vice President

Date: 10/22/13

## Exhibit 1: General Terms and Conditions

### **SECTION D**

#### **GENERAL CONDITIONS**

##### **1.0 STARTING THE WORK**

###### **1.1 Schedule**

Within ten (10) days after execution of the Agreement, the Contractor will submit to the County Engineer for approval an estimated progress schedule indicating the starting and completion dates of the various stages of the Work and a schedule of Shop Drawings submissions.

###### **1.2 Pre-Construction Conference**

Before starting Work, a conference will be held to review the above schedules and Submittal package (See 1.5 Submittals), to establish procedures for handling Shop Drawings and other submissions, to establish procedures for processing applications for payment and to establish a working understanding between the parties as to the project. Present at the conference will be the County Engineer, and/or his Project Representative, and the Contractor and utility company representatives.

###### **1.3 Notice to Proceed**

Upon execution and delivery of the Agreement, the County Engineer will give the Contractor a written Notice to Proceed stating date by which the Contractor must start the Work; but such date shall not be more than thirty (30) days after the date of execution and delivery of the Agreement. No work shall be done prior to receipt of the Notice to Proceed.

###### **1.4 Commencement of Time**

The Contract Time shall commence on the date when the Work is actually started but no later than the date provided in the Notice to Proceed.

###### **1.5 Submittals**

The Contractor's submittal package for the Pre-Construction meeting shall include: Exhibit R, Surveyor's license confirmation, Maintenance of Traffic Plan, Erosion & Sedimentation Control Plan and Quality Control Plan to be approved by the County prior to any construction activities along with any other requirements as outlined in this document. Submittals must be approved by the County prior to implementation.

##### **2.0 INTENT OF CONTRACT DOCUMENTS**

2.1 It is the intent of the Specifications and Drawings to describe a complete project to be constructed in accordance with the Contract Documents.

2.2 The Contract Documents comprise the entire Agreement between the County and the Contractor. They may be amended only by approval of a Change Order or Field Change Order.

##### **3.0 OWNERSHIP AND COPIES OF DOCUMENTS; RECORD DOCUMENTS**

3.1 All Specifications, Drawings and copies thereof furnished by Alachua County shall remain the property of Alachua County. They shall not be used on another project, and with the exception of those sets of Contract Documents which have been signed in connection with the execution of the Agreement, shall be returned to the County on request upon completion of the project.



- 3.2 The County will furnish to the Contractor three (3) copies of the Drawings as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.
- 3.3 The Contractor will keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. These shall be available to the Director and/or his Project Representatives.

#### 4.0 **WORK BY OTHERS**

- 4.1 The County may perform additional work related to the project by itself, or the County may let other direct contracts therefore, which shall contain General Conditions similar to these. The Contractor shall afford the other Contractors who are parties to such direct contracts (or the County, if it is performing the additional work) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work and shall properly connect and coordinate his work with theirs.
- 4.2 If any part of the Contractor's Work depends for proper execution or results upon the work of any such other Contractor (or the County), the Contractor will inspect and promptly report to the County Engineer in writing any defects or deficiencies in such work that render it unsuitable for such proper execution and results. His failure to so report shall constitute an acceptance of the other work as to be fit and proper for the relationship of his Work, except as to defects and deficiencies which may appear in the other work after the execution of his Work.
- 4.3 The Contractor will do all cutting, fitting and patching of his Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. The Contractor will not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the County Engineer.
- 4.4 If the performance of additional work by other contractors or the County is not noted in the Contract Documents prior to the award of the contract, written notice thereof shall be given to the Contractor prior to starting any such additional work. Contractor work schedules shall be adjusted to allow for any necessary utility adjustments identified prior to start of work. If the Contractor believes that the performance of such additional work by the County or others involves him in additional expense or entitles him to an extension of the Contract Time, he may make a claim therefore as provided in **Section D**, Paragraphs 15-17.

#### 5.0 **RESPONSIBLE AGENT**

- 5.1 The Contractor shall designate and submit a responsible agent and alternate as necessary, for all dealings, communications, or notices or contracts between the County and the contractor, **Section G, Exhibit F**.
- 5.2 The County Engineer will be the responsible agent for the County. Any notice or communication to or from the responsible agent shall be deemed to be a communication to the contractor.
- 5.3 A letter when addressed and sent by certified list mail to either part, at its business herein, will constitute notice required in this bid or contract.

#### 6.0 **ACCIDENT PREVENTION**

- 6.1 Precaution shall be exercised at all times for the protection of employees, other persons and property.
- 6.2 Contractor's employees shall report to their superintendent any hazardous conditions or items in need

of repair noted during the performance of work. Said superintendent shall thereupon notify the responsible agent or his designee of such conditions.

## 7.0 **SUBCONTRACTS**

- 7.1 With the Bid Proposal, the successful Bidder will have submitted to the County and the County Engineer for acceptance, a list of the names of proposed Subcontractors and suppliers. Prior to the execution and delivery of the Agreement, the County Engineer will notify the successful Bidder in writing if either the County or the County Engineer, after due investigation, has reasonable objection to any Subcontractor, person or organization on such list. The failure of the County or the County Engineer to make objection to any Subcontractor, person or organization on the list prior to the execution and delivery of the Agreement shall constitute an acceptance of such Subcontractor, person or organization. Acceptance of any such Subcontractor, person or organization shall not constitute a waiver of any right of the County or the County Engineer to reject Work, material or equipment that is either defective or not in conformance with the requirements of the Contract Documents.
- 7.2 If, prior to the execution and delivery of the Agreement, the County or the County Engineer has reasonable objection to and refuses to accept any Subcontractor, person or organization on such list, the successful Bidder may, prior to such execution and delivery, either (i) submit an acceptable substitute without an increase in his Bid price, or (ii) withdraw his Bid and forfeit any Bid security. If, after the execution and delivery of the Agreement, the County or the County Engineer refuses to accept any Subcontractor, person or organization on such list, the Contractor will submit an acceptable substitute, the Contract Price shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued. No such increase in the Contract Price shall be allowed if the disputed Subcontractor was not identified on the Subcontractor list submitted prior to award of the Contract.
- 7.3 The Contractor will not employ any Subcontractor (whether initially or as a substitute) against whom the County or the County Engineer may have reasonable objection, nor will the Contractor be required to employ any Subcontractor against whom he has reasonable objection. The Contractor will not make any substitution for any Subcontractor who has been accepted by the County and the County Engineer, prior to written concurrence by the County Engineer.
- 7.4 The Contractor will be fully responsible for all acts and omissions of his Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor and the County or the County Engineer or any obligation on the part of the County or the County Engineer to pay or to see to the payment of any monies due any Subcontractor, except as may otherwise be required by law. The Director may furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to the Contractor as compensation for specific Work performed.
- 7.5 The divisions and sections of the Specifications and the identifications of any Drawings shall not control the Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any trade.
- 7.6 The Contractor agrees to specifically bind every Subcontractor to all of the applicable terms and conditions of the Contract Documents. Every Subcontractor, by undertaking to perform any of the Work, will thereby automatically be deemed to be bound by such terms and conditions.

## 8.0 **PHYSICAL AND SUBSURFACE CONDITIONS**

8.1 The County Engineer will, upon request, furnish to the Contractor copies of all available boundary surveys and subsurface tests.

8.2 The Contractor will promptly notify the County Engineer in writing of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents. The County Engineer will promptly investigate those conditions and determine if further surveys or subsurface tests are necessary. Promptly thereafter, the County Engineer will obtain the necessary additional surveys and tests and furnish copies to the Contractor. If the County Engineer finds that the results of such surveys or tests indicate subsurface or latent physical conditions differing significantly from those indicated in the Contract Documents, a Change Order shall be issued incorporating the necessary revisions.

#### **9.0 COUNTY ENGINEER'S STATUS DURING CONSTRUCTION**

9.1 The County Engineer shall be the County's representative during the construction period. All instructions of the County to the Contractor shall be issued through the County Engineer.

9.2 The County Engineer will make periodic visits to the site to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. He will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, nor will he be responsible for the construction means, methods, techniques, sequences, procedures or the safety precautions incident thereto. His efforts will be directed toward providing assurance for the County that the completed project will conform to the requirements of the Contract Documents, but he will not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents. On the basis of his on-site observations as an experienced and qualified design professional, he will keep the County informed of the progress of the Work and will endeavor to guard the County against defects and deficiencies in the Work of the Contractor.

9.3 The County Engineer will have authority to disapprove of or reject Work which is defective; i.e., it is unsatisfactory, faulty or defective, does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in **Section D**, Paragraph 11. He will also have authority to require special inspection or testing of the Work as provided in **Section D**, Paragraph 13.2, whether or not the Work is fabricated, installed or completed.

9.4 Neither the County Engineer's authority to act under this **Section D**, Paragraph 9 nor any decision made by him in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the County Engineer to the Contractor and Subcontractor, any of their agents or employees or any other person performing any of the Work.

#### **10.0 COUNTY ENGINEER'S INTERPRETATIONS AND DECISIONS**

10.1 The County Engineer will issue with reasonable promptness such written clarifications or interpretations (in the form of drawings or otherwise) as he may determine necessary for the proper execution of the Work. Such clarifications and interpretations are to be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the Contractor believes that a written clarification and interpretation entitles him to an increase in the Contract Price, he may make a claim therefore as provided in **Section D**, Paragraph 16.

10.2 The County Engineer will be the initial interpreter of the terms and conditions of the Contract Documents and the judge of the performance there under. In his capacity as interpreter and judge he will exercise his best efforts to insure faithful performance by both the County and the Contractor. He will not show partiality to either and shall not be liable for the result of any

interpretation or decision rendered in good faith. Claims, disputes and other matters relating to the execution and progress of the Work or the interpretation of or performance under the Contract Documents shall be referred initially to the County Engineer for decisions, which he shall render in writing within a reasonable time.

#### **11.0 TESTS AND INSPECTIONS**

- 11.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested or approved by someone other than the Contractor, the Contractor will give the County Engineer timely notice of readiness therefore. The Contractor will furnish the County Engineer the required certificates of inspection, testing or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organization as may be required by law or the Contract Documents. If any such Work required so to be inspected, tested or approved is covered up without written approval or consent of the County Engineer, it must, if directed by the County Engineer, be uncovered for observation at the Contractor's expense. The cost of all such inspections, tests and approvals shall be borne by the Contractor unless otherwise provided.
- 11.2 Any Work which fails to meet the requirements of any such test, inspection or approval and any Work which meets the requirements of any such test or approval but does not meet the requirements of the Contract Documents shall be considered defective. Such defective Work may be rejected, corrected or accepted as provided in **Section D**, Paragraph 19.
- 11.3 Neither observations by the County Engineer nor inspections, tests, or approvals by persons other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the requirements of the Contract Documents.

#### **12.0 CONTRACTOR'S SUPERVISION AND SUPERINTENDENCE**

- 12.1 The Contractor will supervise and direct the Work efficiently and with his best skill and attention. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. Before undertaking the Work, he will carefully study and compare the Contract Documents and check and verify all figures shown thereon and all field measurements. He will at once report in writing to the County Engineer any conflict, error or discrepancy which he may discover. The Contractor will be responsible to see that the finished Work complies accurately with the Contract Documents.
- 12.2 The Contractor will keep on the Work, at all times during its progress, a resident superintendent satisfactory to the County Engineer. The superintendent shall not be replaced without the consent of the County Engineer, except under extraordinary circumstances. The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor.
- 12.3 The Contractor will provide competent, suitably qualified personnel and perform construction as required by the Contract Documents. Survey and layout work shall be performed under direction of a Florida Registered Land Surveyor. Surveyor is required to sign, seal and return the form provided in **Section H Exhibit R**. He will at all times maintain good discipline and order among his employees at the site.
- 12.4 The County Engineer will not be responsible for the acts or omissions of the Contractor, any Subcontractors, any of his or their agents or employees or any other persons performing any of the Work.

12.5 The Contractor shall have a responsible person or persons available on a 24-hour basis seven (7) days a week in order that contact can be made in emergencies and in cases where immediate action must be taken to maintain traffic or to overcome any other problem that might arise. The furnishing of a telephone number where such person or persons can be reached outside of normal working hours will constitute compliance with this provision.

### **13.0 ACCESS TO THE WORK: UNCOVERING FINISHED WORK**

13.1 The County Engineer and his representatives and other representatives of the County will at all times have access to the Work. The Contractor will provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

13.2 If any Work is covered contrary to the request of the County Engineer, it must, if requested by the County Engineer, be uncovered for his observation and replaced at the Contractor's expense.

13.3 If any Work has been covered which the County Engineer has not specifically requested to observe prior to its being covered, or if the County Engineer considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Director's request, will uncover, expose or otherwise make available for observation, inspection or testing, that portion of Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective or does not meet the requirements of the Contract Documents, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services. If, however, such Work is found to be non-defective and meets the requirements of the Contract Documents, the Contractor will be allowed an increase in the Contract Price or extension of the Contract Time directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if he makes a claim therefore as provided in **Section D**, Paragraph 16 and 17.

### **14.0 MODIFICATIONS**

14.1 This agreement constitutes the entire agreement and understanding between the parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

14.2 The County will not be bound under this agreement for similar or like services being provided by County agencies or for services entered into by the County under a separate agreement.

### **15.0 CHANGES IN THE WORK**

15.1 Without invalidating the Agreement, the County may, at any time or from time to time, order additions, deletions, or revisions in the Work. These will be authorized by Change Order or Field Change Order as appropriate. Upon receipt of written authorization, the Contractor will proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any changes in the Work cause an increase or decrease in the Contract Price, addition of Pay Items, or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in **Section D**, Paragraphs 15-17.

15.2 The Public Works Director may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Change Order. If the Contractor believes that any minor change or alteration authorized by the Director entitles him to an increase in the Contract Price, he may make a claim therefore as provided in **Section D**, Paragraph 16.

15.3 Additional work performed by the Contractor prior to written authorization will not automatically entitle him to additional compensation, an increase in the Contract Price, or an extension of the Contract Time.

15.4 It is the Contractor's responsibility to notify his surety of any changes affecting the general scope of the Work or change in the Contract Price, and the amount of the applicable Bonds shall be adjusted accordingly. The Contractor will furnish proof of such adjustment to the County.

## **16.0 CHANGE OF CONTRACT PRICE**

16.1 The Contract Price constitutes the total compensation payable to the Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the Contractor shall be at his expense without change in the Contract Price.

16.2 The Contract Price may only be changed by a Change Order or Field Change Order. If the Contractor is entitled by the Contract Documents to make a claim for an increase in the Contract Price, his claim shall be in writing delivered to the County and the County Engineer within fifteen (15) days of the occurrence of the event giving rise to the claim. change orders will be approved by the following procedure:

16.2.1 The county manager may approve change orders and field change orders that, either cumulatively or individually, increase the contract price up to ten percent of the original contract price or \$500,000.00, whichever is less. The board shall approve change orders that, either individually or cumulatively, increase the contract price by more than ten percent of the original contract price or \$500,000.00, whichever is less.

16.2.2 The administrative services director or public works director may approve change orders of up to \$100,000.00 each when immediate approval is required to avoid delay or prevent an increase in cost, provided that the cumulative total of these change orders does not exceed ten percent of the original contract price or \$500,000.00, whichever is less.

16.2.3 The county manager, administrative services director or public works director may approve all change orders and field change orders that do not increase the cost to the county

16.2.4 The public works director may approve field change orders, provided that the cumulative total of all change orders and field change orders does not exceed ten percent of the original contract price or \$500,000, whichever is less.

16.2.5 Only the board may approve a change order or field change order that expands the size, function, or intended use of the project from that stated in the contract documents, regardless of cost.

16.3 All change orders and field change orders approved by the county manager, administrative services director, or public works director shall be reported to the board as information items to be included in its consent agenda.

16.4 The value of any Work covered by a Change Order or Field Change Order, for any claim for an increase in the Contract Price, shall be determined in one of the following ways:

16.4.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.

16.4.2 Mutual acceptance of a lump sum or unit price.

16.4.3 Cost and a mutually acceptable fixed amount for overhead and profit.

16.4.4 If none of the above methods is agreed upon, the value shall be determined on the basis of costs and a percentage for overhead and profit. Costs shall only include labor (payroll, payroll taxes, fringe benefits, workman's compensation, etc.) materials, equipment, and other incidentals directly related to the Work involved. The maximum percentage which shall be allowed for the Contractor's combined overhead and profit, shall be as follows:

16.4.4.1 For all such Work done by his own organization, the Contractor may add up to 10% (ten percent) of his actual increase in cost; and

16.4.4.2 For all such Work done by Subcontractors, each Subcontractor may add up to 10% (ten percent) of his actual net increase in cost for combined overhead and profit; and the Contractor may add up to 5% (five percent) of the Subcontractor's total for his combined overhead and profit, provided that no overhead or profit shall be allowed on costs incurred in connection with premiums for public liability insurance or other special insurance directly related to such Work. In such case and also under paragraph 16.4.4.1, the Contractor will submit in a form prescribed by the Director an itemized cost breakdown together with supporting data

16.4.5 Pay factor adjustments will be adjusted in accordance with details outlined in Section E, Special Conditions.

16.5 The amount of credit to be allowed by the Contractor to the County for any such change which results in a net decrease in cost, will be in the amount of the actual net decrease as determined in **Section D**, Paragraph 16.4 and processed by Change Order or Field Change Order.

## **17.0 CHANGE OF THE CONTRACT TIME**

17.1 The Contract Time may be changed by a Change Order. Contract Time may be changed for Weather Days only in a Field Change Order. If the Contractor is entitled by the Contract Documents to make a claim for an extension in the Contract Time, his claim shall be in writing delivered to the County Engineer within fifteen (15) days of the occurrence of the event giving rise to the claim. The County Manager, Administrative Services Director or Public Works Director may approve any extension in Contract Time. Contract Time shall not be extended for County designated holidays. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

17.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor, if he makes a claim therefore as provided in **Section D**, Paragraph 17.1. Such delays shall include, but not be restricted to, acts of neglect by any separate contractor employed by the County, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

17.3 All time limits stated in the Contract Documents are of essence in the Agreement. The provisions of this **Section D**, Paragraph 17 shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.

## **18.0 NEGLECTED WORK**

18.1 If the Contractor should neglect to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, after three (3) days written notice to the Contractor, the County Engineer may, without prejudice to any other remedy he may have, make good such deficiencies, and the cost thereof (including compensation for additional professional services) shall be charged against the Contractor. In this case a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including an appropriate reduction in the Contract Price. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor will pay the difference to the County.

## **19.0 WARRANTY AND GUARANTEE; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

19.1 The Contractor warrants and guarantees to the County and the County Engineer that all materials and equipment will be new unless otherwise specified; that all Work will be of good quality and free from faults or defects and in accordance with the requirements of the Contract Documents. All unsatisfactory Work, all faulty or defective Work and all Work not conforming to the requirements of the Contract Documents or of such inspections, tests or approvals shall be considered defective. Prompt notice of all defects shall be given to the Contractor. All defective Work, whether or not in place, may be rejected.

19.2 If required by either the Director or the County Engineer prior to approval of final payment, the Contractor will promptly, without cost to the County and as required by either the Director or the County Engineer, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the County Engineer, remove it from the site and replace it with nondefective Work. If the Contractor does not correct such defective Work or remove and replace such rejected Work within a reasonable time, all as required by written notice from either the Director or the County Engineer, the County may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect cost of such correction or removal and replacement, including compensation for additional professional services, shall be paid by the Contractor, and an appropriate Change Order shall be issued deducting all such costs from the Contract Price. The Contractor will also bear the expenses of making good all Work of others destroyed or damaged by his correction, removal or replacement of his defective Work.

19.3 If, after the approval of final payment and prior to the expiration of one year after the date of substantial completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, the Contractor will promptly without cost to the County and in accordance with the County's written instructions either correct such defective Work, or, if it has been rejected by the County, remove it from the site and replace it with nondefective Work. If the Contractor does not promptly comply with the terms of such instructions, the County may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, will be paid by the Contractor.

19.4 If, instead of requiring correction or removal and replacement of defective Work, the County prefers to accept it, the County may do so. In such case, the appropriate reduction in the bid item amount shall be negotiated with the Contractor by the County Engineer with the appropriate reductions submitted in the application for final payment. In the event the appropriate reduction cannot be negotiated, the provisions of **Section D**, Paragraph 33 shall prevail.

## **20.0 APPLICATIONS FOR PROGRESS PAYMENTS**



- 20.1 Not more than once a month, the County Engineer will submit to the Contractor for review the application for payment, covering the Work completed as of the date of the application. If payment is requested by the Contractor on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the request for payment shall also be accompanied by such supporting data, satisfactory to the County Engineer, as will establish 100% of invoice cost. Such payment to the Contractor shall not exceed seventy-five percent (75%) of the Unit Bid Price. Materials missing or damaged, for which partial or total payment has been made, shall be replaced by the Contractor at his expense.
- 20.2 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the project or not, will have passed to the County prior to the making of the application for payment, free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "liens"). The Contractor further warrants and guarantees that no Work, materials or equipment covered by an application for payment will have been acquired by the Contractor or by any other person performing the Work at the site or furnishing materials and equipment for the Project subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. Non-payment of subcontractors and suppliers will be referred to the Contractor's Surety for resolution.
- 20.3 The County Engineer will, within ten (10) days after Contractor concurrence of each application for payment, indicate in writing his approval of payment, less any retainage as specified by contract, and present the application to the Clerk of the Court for payment. The Clerk of the Court will within three (3) weeks of presentation to him of an approved application for payment, pay the Contractor the amount approved by the County Engineer.

## **21.0 APPROVAL OF PAYMENTS**

- 21.1 The County Engineer's approval of any payment requested in an application for payment shall constitute a representation by him to the County, based on the County Engineer's on-site observations of the work in progress as an experienced and qualified design professional and on his review of the application for payment and the supporting data, that the Work has progressed to the point indicated; to the best of his knowledge, information and belief, that the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the Contract Document and any qualifications stated in his approval); and that the Contractor is entitled to payment of the amount approved. However, by approving any such payment, the County Engineer shall not thereby be deemed to have represented that he made exhaustive or continuous on-site inspections to check the quality or the quantity of the Work; that he has reviewed the means, methods and techniques, sequences and procedures of construction; or that he has made any examination to ascertain how or for what purpose the Contractor has used the monies paid or to be paid to him.
- 21.2 The County Engineer's approval of final payment shall constitute an additional representation by him to the County that the conditions precedent to the Contractor's being entitled to final payment, as set forth in **Section D**, Paragraph 21.3, have been fulfilled.
- 21.3 The County Engineer may refuse to approve the whole or any part of any payment if, in his opinion, he is unable to make such representations to the County. He may also refuse to approve any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, may nullify any such payment previously approved, to such extent as may be necessary in his opinion to protect the County from loss because:

- 21.3.1 The Work is defective.

- 21.3.2 Claims have been filed, or there is reasonable evidence indicating the probable filing thereof.
- 21.3.3 The Contract Price has been reduced.
- 21.3.4 The County has been required to correct defective Work or complete the Work in accordance with **Section D**, Paragraph 18, or
- 21.3.5 Unsatisfactory prosecution of the Work, including failure to clean up as required by **Section D**, Paragraph 28.

## **22.0 FINAL PAYMENT**

- 22.1 Upon notification from the Contractor that the project is complete, the County Engineer will make a final inspection with the Contractor and will notify the Contractor in writing of any particulars in which this inspection reveals that the Work is defective. The Contractor shall immediately make such corrections as are necessary to remedy such defects.
- 22.2 After the Contractor has completed any such corrections to the satisfaction of the County Engineer and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection and other documents, all as required by the Contract Documents, he may receive final payment following the procedure for progress payments. The final application for payment shall be accompanied by the Contractor's Affidavit and Release of Lien and Subcontractor/Materialman Waiver and Release of Lien, utilizing the form provided. Nothing in this section waives the rights of the Contractor under Section 255.05(11) F.S. The County Engineer will execute a Certificate of Completion and recommend final payment.
- 22.3 If, on the basis of his observation and review of the Work during construction, his final inspection and his review of the final application for payment, all as required by the Contract Documents, the County Engineer is satisfied that the Work has been completed and the Contractor has fulfilled all of his obligations under the Contract Documents, he will, within ten (10) days after Contractor concurrence of the final application for payment, indicate in writing his approval of payment and present the application to the Clerk of the Court for payment. The Clerk of the Court will, within three (3) weeks of presentation to him of an approved final application for payment, pay the Contractor the amount approved by the County Engineer.
- 22.4 If after substantial completion of the Work, final completion thereof is materially delayed through no fault of the Contractor, and the County Engineer so confirms, the County shall, upon certification by the County Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in **Section D**, Paragraph 27, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the County Engineer prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claim.

## **23.0 WAIVERS OF CLAIMS AND CONTINUING OBLIGATIONS**

- 23.1 The Contractor's obligations to perform the Work and complete the project in accordance with the Contract Documents shall be absolute. Neither approval of any progress, nor approval of final payment by the Director, nor the issuance of a certificate of substantial completion, nor any payment by the Clerk of the Court to the Contractor under the Contract Documents, nor any use or

occupancy of the project or any part thereof by the County, nor any act of acceptance by the County, nor any failure to do so, nor any correction of faulty or defective work by the County shall constitute an acceptance of Work not in accordance with the Contract Documents.

23.2 The making and acceptance of final payment shall constitute:

23.2.1 A waiver of all claims by the County against the Contractor, other than those arising from unsettled Liens, from faulty or defective work appearing after final payment or from failure to comply with the requirements of the Contract Documents or the terms of any special guarantees specified therein, and

23.2.2 A waiver of all claims by the Contractor against the County, other than those previously made in writing and still unsettled.

#### **24.0 INDEMNIFICATION**

24.1 To the maximum extent permitted by Florida law, the Contractor shall defend, indemnify and hold harmless the County and its officers and employees from any and all liabilities, claims, damages, penalties, demands, judgments, actions, proceedings, losses or costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, whether resulting from any claimed breach of this Agreement by the Contractor or from personal injury, property damage, direct or consequential damages, or economic loss, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor or anyone employed or utilized by the Contractor in the performance of this Agreement.

24.2 The duty to defend under this Article is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Contractor, the County and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to the Contractor. The Contractor's obligation to indemnify and defend under this Article will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the County or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

24.3 This obligation shall in no way be limited in any nature whatsoever by any limitation on the amount or type of Contractor insurance coverage. This indemnification provision shall survive the termination of the Contract between the County and the Contractor.

24.4 In any and all claims against the County or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or employee benefit acts.

#### **25.0 DEFAULT AND TERMINATION**

25.1 The failure of either party to comply with any provision of this agreement shall place that party in default. Prior to terminating this agreement, the non-defaulting party shall notify the defaulting party in writing. Notification shall make specific reference to the provision which gave rise to the default.

25.2 The defaulting party shall be given seven (7) days in which to cure the default. The County Engineer is authorized to provide written notice of termination on behalf of the County, and if the default

situation is not corrected within the allotted time, the Department is authorized to provide final termination notice on behalf of the County to the Contractor.

25.3 The County may terminate this agreement without cause by first providing at least thirty (30) days written notice to the Contractor prior to the termination date. The Department County Engineer is authorized to provide written notice of termination on behalf of the County.

25.4 If the contractor is adjudged bankrupt, either voluntary or involuntary, the County may terminate the contract effective on the day and at the time the bankruptcy petition is filed and may proceed to provide service as previously outlined.

25.5 In the event funds to finance this contract become unavailable, the County may terminate the contract with no less than twenty-four hours notice in writing to the Contractor. The County shall be the final authority as to the availability of funds.

#### **26.0 SUCCESSORS AND ASSIGNS**

26.1 The County and Contractor each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this agreement, and any assignment or transfer by the Contractor of its interest in this agreement without the written consent of the County shall be void. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County or Contractor, nor shall it be construed as giving any right or benefit hereunder to anyone other than the County or the Contractor.

#### **27.0 CONTRACT BONDS**

27.1 The Contractor will furnish performance and payment Bonds as surety for the faithful performance and payment of all his obligations under the Contract Documents. These Bonds shall be in amounts at least 110% of the Contract Price and in such form and with such sureties as are acceptable to the County. Surety insurers shall be authorized to do business in the State of Florida. Prior to execution of the Contract Documents, the County may require the Contractor to furnish such other Bonds in such form and with such sureties as he may require. If such Bonds are required by written instructions given prior to the openings of Bids, the premiums shall be paid by the Contractor; if subsequent thereto, they shall be paid by the County.

#### **28.0 CLEANING UP**

28.1 The Contractor will keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work, and, at the completion of the Work, he will remove all waste materials, rubbish and debris from and about the premises, as well as all tools, construction equipment and machinery and surplus materials, leaving the site clean and ready for occupancy by the County. The Contractor will restore to their original condition those portions of the site not designated for alteration by the Contract Documents.

#### **29.0 COUNTY'S RIGHT TO STOP OR SUSPEND WORK**

29.1 If the Work is defective, if the Contractor fails to supply sufficient skilled workmen or suitable materials or equipment or if the Contractor fails to make prompt payments to Subcontractors for labor, materials or equipment, the County may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The Contractor will be allowed no increase in Contract Price or extension of the Contract Time.

29.2 The County may, at any time and without cause, suspend the Work, at any portion thereof, for a period of not more than ninety (90) days by notice in writing to the Contractor, and shall determine the

date on which the Work will be resumed. The Contractor will resume the work on the date so determined. The Contractor may be allowed an increase in the Contract Amount or an extension of the Contract Price directly attributable to any suspension provided he makes a claim therefore as provided in **Section D**, Paragraphs 16 and 17.

### **30.0 COUNTY'S RIGHT TO TERMINATE**

30.1 If the Contractor is adjudged bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtors' act, or to reorganize under the bankruptcy or similar laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he fails to make prompt payments to Subcontractors or for labor, materials, or equipment, or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if he disregards the authority of the County Engineer, or he otherwise violates any provisions of the Contract Documents, then the County may, without prejudice to any other right or remedy and after giving the Contractor and his surety seven (7) days written notice, terminate the service of the Contractor and take possession of the project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the Work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished.

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

30.3 Upon seven (7) days written notice to the Contractor, the County may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the Agreement. In such case, the Contractor shall be paid for all Work executed and any expense sustained plus a reasonable profit.

### **31.0 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE**

31.1 If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) days by the County or an order of court or other public authority, or if the County Engineer fails to act on any application for payment within thirty (30) days after it is submitted, or if the County fails to pay the Contractor any sum approved by the County Engineer or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, upon seven (7) days written notice to the County and the County Engineer, terminate the Agreement and recover from the County payment for all Work executed and any expense sustained plus a reasonable profit. In addition and in lieu of terminating the Agreement, if the County Engineer has failed to act on an application for payment or the County has failed to make payment as aforesaid, the Contractor may, upon seven (7) days notice to the County and the County Engineer, stop Work until he has been paid all amounts then due.

### **32.0 WORKPLACE VIOLENCE**

32.1 Employees of bidders (or responders for RFP's) are prohibited from committing any act of workplace violence. Violation may be grounds for termination. Workplace violence means the commission of any of the following acts by a bidder's employee.

32.1.1 Battery: intentional offensive touching or application of force or violence to another.

32.1.2 Stalking: willfully, maliciously and repeatedly following or harassing another person.

### 33.0 MISCELLANEOUS

#### 33.1 WRITTEN NOTICE

Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an office of the corporation for whom it is intended or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to him who gives the notice.

#### 33.2 DUTIES AND OBLIGATIONS

Imposed by these General Conditions and the rights and remedies available hereunder, and, in particular without limitation, the warranties, guarantees and obligations imposed upon the Contractor by **Section D**, Paragraph 19 and 23 and the rights and remedies available to the County and County Engineer thereunder, shall be in addition to and not a limitation of any otherwise imposed or available by law, by special guarantee or other provisions of the Contract Documents.

#### 33.3 GOVERNING LAW

The Contract Document shall be governed by the law of the State of Florida.

#### 33.4 POLLUTION ABATEMENT

The Contractor shall comply with all Federal, State and Local laws and regulations controlling pollution of the environment. He shall take necessary precautions to prevent pollution of streams, lakes and ponds with fuels, oils, bitumens, chemicals and other harmful materials. He shall take necessary measures to minimize soil erosion.

#### 33.5 INJURY OR DAMAGE TO PEOPLE OR PROPERTY

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

#### 33.6 HEALTH CONSIDERATIONS

The Contractor shall provide and maintain, in a neat and sanitary condition, such accommodations for the use of his employees as are necessary to comply with the requirements and regulations of the State and Local Boards of Health. He shall commit no public nuisance.

33.7 ASSIGNMENT OF INTEREST --Any individual or firm shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of the County.

#### 33.8 BOOKS AND PROJECT RECORDS –

33.8.1 All records relating in any manner whatsoever to the project, which are in the possession of the Contractor, shall be made available to the County for inspection and copying upon written request of the County, and shall be kept for a period of five (5) years. or fifteen (15) years if related to a capital improvement project, after the completion of all work to be performed, or as required by Chapter 119, Florida Statutes (Public Records Act) and schedules published by the Florida Bureau of Archives and Records Management, or federal requirements, whichever shall be greater. Additionally, said records shall be made available, upon request by the County, to any state, federal, or other regulatory authorities and any such authority may review, inspect and copy such records, except as considered confidential under Chapter 119, Florida Statutes.

33.8.2 Any document submitted to the County may be a public record and be open for inspection or copying by any person or entity. In Florida “public records” are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings,

data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Section 119.011(11), Florida Statutes. A document is subject to inspection and copying unless it falls under one of the public records exemptions created under Florida law.

- 33.8.3 The contractor states now or may claim at some time during the term of this agreement or license, that some or all of The contractor's information, including but not limited to software, documentation, manuals, written methodologies and processes, or pricing, discounts or other considerations (collectively the "Confidential Information" or "CI"), is considered, or has been treated as, confidential and proprietary by the contractor in accordance with section 812.081 Florida Statutes, or other law, and is thus confidential and exempt from disclosure under the Public Records Act. The contractor shall clearly identify and mark such information as confidential, proprietary and exempt from disclosure. County will make its best efforts to maintain the confidentiality of the CI once it has been properly identified as CI by the Contractor.
- 33.8.4 The County shall provide the Contractor prompt written notice of any request received by it for disclosure of the CI so that the Contractor may assert any exemption from disclosure under applicable law that may be available to them or seek to obtain a protective order against disclosure. The contractor agrees to protect, defend, indemnify, and hold the County, its officers, employees and agents free and harmless from and against any and all claims or judgments arising out of a request to inspect or copy the CI. The contractor agrees to investigate, handle, respond to, provide defense (including payment of attorney fees, court costs, and expert witness fees and expenses up to and including any appeal) for and defend any such claim at its sole cost and expense through counsel chosen by the County and agrees to bear all other costs and expenses related thereto, even if they (claims, etc.) are groundless, false, or fraudulent. Upon completion of this Agreement, the provisions of this paragraph shall continue to survive. The contractor releases County from claims or damages related to disclosure by County.
- 33.8.5 If Contractor refuses to perform its duties under this section within 14 calendar days of notification by County that a demand has been made to disclose Contractor's CI, then Contractor waives its claim that any of its information is CI, and releases County from claims or damages related to the subsequent disclosure by County.

33.9 NON WAIVER – The failure of either party to exercise any right shall not be considered a waiver of such right in the event of any further default or non compliance.