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Y25-711

PARKS BARNETT PARK NEW 100 TON REDUNDANT CHILLER

Orange County, Florida

400 E South Street

Orlando, FL 32801

RELEASE DATE: October 14, 2024

DEADLINE FOR QUESTIONS: October 30, 2024

RESPONSE DEADLINE: November 14, 2024, 4:00 pm

RESPONSES MUST BE SUBMITTED ELECTRONICALLY TO:

<https://secure.procurenw.com/portal/orangecountyfl>

Orange County, Florida
undefined

Parks Barnett Park New 100 Ton Redundant Chiller

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Attachments:

- A - Parks Barnett Park New 100 Ton Redundant Chiller-Specifications
- B - Parks Barnett Park New 100 Ton Redundant Chiller-Drawings

1. Introduction & Submittal Instructions



1.1. Summary

NOTICE IS HEREBY GIVEN that Orange County, Florida, henceforth referred to as the County is accepting sealed bids for Parks Barnett Park New 100 Ton Redundant Chiller (Y25-711)

Sealed offers for furnishing the above will be accepted up to 4:00 pm EST on Thursday, November 14, 2024.

The Estimated Cost for this project is \$1,450,000.00.

NOTE: Respondents are required to submit responses electronically via the OpenGov e-Procurement Platform. Respondents shall not be permitted to hand-deliver, mail, telephone, fax or email offers.

Responses received after the submission deadline and/or transmitted outside of the designated OpenGov e-Procurement Platform shall be rejected.

Important Instructions for Electronic Submittal

The County is ONLY accepting electronic bid submissions using the OpenGov e-Procurement Platform. Respondents shall create a FREE account with OpenGov by signing up at <https://procurement.opengov.com/login> Once you have completed account registration, browse back to this page, click on "Submit Response", and follow the instructions to submit the electronic bid.

It is the respondent's responsibility to ensure they commence their upload efforts timely to meet the submission deadline. The County shall not be responsible for delays caused by any occurrence, including the respondent's network delays, bandwidth issues, internet outages, or technical difficulties.

OpenGov Technical Support For Technical Support, respondent's can reach the OpenGov Service Desk:

Chat (preferred): Click the button in the lower right hand corner of the portal

Email: procurement-support@opengov.com

Phone: 1 (650) 336-7167

Hours: Mon-Fri 7am - 10pm EST

Timely Questions Regarding this Solicitation

The question and answer module of OpenGov IS being utilized for this solicitation. Timely questions concerning this solicitation shall be submitted in accordance with the deadline for questions:

Wednesday, October 30, 2024 at 4:00 pm EST. Respondents are instructed not to contact the initiating division directly.

Consideration for modification or alteration of the documents contained in this solicitation shall be requested during the specified question period, before the applicable deadline. No oral interpretation of the meaning of the plans, specifications, or other Contract documents shall be considered binding. The County shall be bound by information and statements only when such statements are written and executed under the authority of the Manager, Procurement Division.

Answers for timely questions will be addressed in the OpenGov question and answer module or as an addenda to this solicitation depending on volume, participants are encouraged to subscribe as a follower and monitor all notifications. Beyond questions and answers, any and all modifications, clarifications, interpretations and supplemental instructions will be in the form of a written addendum which, if issued, will be available for download. All addenda and questions/answers so issued shall become part of the Contract Documents and receipt shall be acknowledged as specified herein.

This provision exists solely for the convenience and administrative efficiency of Orange County. No respondent or other third party gains any rights by virtue of this provision or the application thereof, nor shall any respondent or third party have any standing to sue or cause of action arising there from.

Untimely questions are unable to be submitted in the question and answer module, thereafter respondents raising critical concerns must email gerson.vazquezgonzalez@ocfl.net. Critical clarifications may be made via addenda, however, untimely questions may not be considered.

1.2. [Background](#)

Orange County exercises the rights and privileges conveyed to it by the State of Florida, and the Orange County Charter. It presently operates with an elected chief executive officer, Orange County Mayor, and six elected district commissioners, who together comprise the Board of County Commissioners.

Procurement is an essential function of the County, affecting all operational departments, ongoing projects and future initiatives. The Procurement Division is divided into three (3) Sections, the "Buying Section", the "Purchasing Section" and the "Contracts Section".

The Orange County Procurement Division operates under the leadership of **Carrie Mathes, MPA, NIGP-CPP, CFCM, CPPO, CPPB** as Procurement Division Manager and Chief Procurement Official in accordance with the Orange County Ordinance.

1.3. [Contact Information](#)

Orange County Procurement Point of Contact

Gerson Vazquez Gonzalez

Contracting Agent

Email: gerson.vazquezgonzalez@ocfl.net

Phone: [\(407\) 836-5635](tel:(407)836-5635)

Department:

Administrative Svcs., Procurement Division

1.4. Timeline

Release Project Date	October 14, 2024
Pre-Bid Meeting (Non-Mandatory)	October 21, 2024, 2:00pm Join from the meeting link https://ocfl.webex.com/ocfl/j.php?MTID=m662aa807d1a65678e178b5db6e0acdb1 Join by meeting number Meeting number: 1-408-792-6300 Access code: 2869 717 2855 Meeting password: d33mYCWQDM7
Question Submission Deadline	October 30, 2024, 4:00pm
Submission Deadline	November 14, 2024, 4:00pm

2. Solicitation Terms and Conditions

2.1. Mobilization

For information regarding mobilization refer to [#Fee Schedule](#) and [#Solicitation Documents](#).

2.2. References

Respondent shall supply (with the bid form) a list of at least three (3) similar projects successfully completed by the Respondent, as a Prime Contractor or Sub-Contractor within the last ten (10) years, immediately preceding the due date of bid submittal in response to this Invitation for Bids. Failure to provide this information may be cause for rejection of the bid.

Each similar project listed shall be listed with complete information as specifically provided on County's provided reference form. The specific information on references must be provided on the reference form. Do not attach listings of reference information.

All Respondents must submit the requisite number of similar projects. Each such project must be verified by the county in order to be deemed responsible under this "references" section. Failure to provide reference information as requested may result in the rejection of your bid.

RESPONDENTS ARE ADVISED TO CONFIRM THAT:

- a. Each reference provided by the Respondent has up to date contact persons and contact information;
- b. The contact person provided for each reference is someone who has personal knowledge of the Respondent's performance during the referenced project; and
- c. The contact person for each reference has been contacted by the Respondent regarding this specific bid submittal and such person confirmed their willingness to serve as a reference.

THE COUNTY WILL CONTACT THE REFERENCES PROVIDED AND WILL REJECT ANY AND ALL REFERENCES FOR SIMILAR PROJECTS THAT IT IS UNABLE TO INDEPENDENTLY VERIFY.

Notwithstanding anything to the contrary herein, without assuming any obligation to do so, the County reserves the right to follow up with – at minimum – the three (3) lowest Respondents for supplemental submission of references/similar projects. Any such opportunity to supplement or correct granted to a respondent by the County under this provision shall expire at 11:59pm county local time on the second full county business day after the day on which such respondent received the County's request for supplementation. There will be no additional time or consideration granted by the County thereafter.

Respondents found responsible under this "REFERENCES" section may still ultimately be deemed to be not responsible by the County due to other considerations including, but not limited to, other information provided in the Respondent's bid submittal, as well as any history the Respondent may have of negative performance on previous County project(s). ULTIMATELY, THE DETERMINATION OF WHETHER A RESPONDENT IS DEEMED RESPONSIBLE SHALL BE AT THE SOLE DISCRETION OF THE COUNTY.

2.3. Joint Venture Requirements

Respondents submitting as a Joint Venture shall submit documentation as an attachment to their bid response.

If applicable, failure to timely submit

(1) the required [Information for Determining Joint Venture Eligibility Form](#) **AND** (2) a fully executed copy of your joint venture agreement may result in disqualification.

The [Information for Determining Joint Venture Eligibility form](#) can be found at on the County's Forms and Resources website (<https://www.ocfl.net/vfr>).

2.4. County paid Licenses / Permits and Fees

Orange County will bear the cost of all permits, licenses, and fees imposed on the work/project by agencies of the Orange County Board of County Commissioners. This does not alleviate the selected Respondent from obtaining and procuring the permits, as required by the County.

In compliance with the Public Bid Disclosure Act, Section 218.80, Florida Statutes, each permit, license, and/or fee applicable to this work/project (before and during construction) will be paid by the selected Respondent or may be furnished by the Orange County Board of County Commissioners, as specified below:

- The Orange County Government Fee Directory, incorporated herein by reference, contains a list of licenses, permits and fees that may apply to this project. The fee directory link "Fees" is available at:
<http://www.orangecountyfl.net/portals/0/resource%20library/open%20government/FeeDirectory.pdf>
- Licenses, permits and fees which may be required by the State of Florida, State Agencies or by other local governmental entities or agencies other than Orange County Board of County Commissioners. Respondents shall review all applicable licenses, permits and fees and contact the applicable agency if there are any questions.

The selected Respondent shall procure and pay for all permits and licenses, charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the work. The cost of all permits, fees, etc. shall be included in the bid price except where noted otherwise in the specifications or other bid documents.

2.5. Project Fee Schedule

Unless the Bid Item Schedule specifies otherwise, unit prices shall include all incidental Project costs, including but not limited to, mobilization, maintenance of traffic, insurance, bonds, overhead and profit.

The County reserves the right to itemize these expenses in the fee schedule.

2.6. Trade Secret Information

Orange County is subject to the State of Florida's broad public records laws. Therefore, all documents, materials, records, data, or any other information submitted as part of a solicitation response are considered public records governed by the disclosure, exemption, and confidentiality provisions relating to public records in Florida law, including those found in Chapter 119, Florida Statutes.

Section 815.045, Florida Statutes, makes trade secret information, as defined in Section 812.081, Florida Statutes, confidential and exempt from disclosure under Florida public records law. However, please note the following:

- A. A Respondent's desire for privacy of particular information submitted to the County does not make such information trade secret information. Respondents cannot render public records exempt from disclosure as containing trade secret information merely by designating information it furnishes to the County as confidential. Only information that specifically meets the exemption in Section 815.045, Florida Statutes, should be designated as trade secret information by Respondents.
- B. Any Respondent who fails to designate information contained in its solicitation response as trade secret information at the time of solicitation response submittal has not taken the required measures or made reasonable efforts to maintain such information's secrecy and has therefore waived any right to assert trade secret protections for such information. The County will therefore not consider any Respondent's request to designate information in a solicitation response as trade secret information that is made after the time of solicitation submittal.

The County is not soliciting, nor does it desire, the submission of any Respondent's trade secret information as part of this solicitation response. **Notwithstanding the foregoing, to the extent that a Respondent finds it necessary to designate certain information in its solicitation response as being trade secret information, the Respondent shall attach the following items to its solicitation response:**

- A. **Trade Secret Information Itemization Log**. The Respondent shall create and attach to its solicitation response a "*Trade Secret Information Itemization Log*" that:
 1. Clearly itemizes any and all information that the Respondent designates as confidential trade secret information.
 2. Completes such itemization in the narrowest and least expansive manner (word, line, paragraph, page, etc.) necessary to protect the confidentiality of the Respondent's trade secret information.
 3. Per item, provides the impacted submittal section/item number, a written explanation that comprehensively supports the Respondent's classification of such information as trade secret information under state or federal law, and the legal citation under which such information is exempt and confidential from disclosure.

- B. Redacted Impacted Submittals.** For each submittal that contains information designated by the Respondent as trade secret information, the Respondent shall attach a redacted copy of such impacted submittal. Such redactions must include notations containing cross-references to the itemized trade secret information as submitted in the Trade Secret Information Itemization Log. Redactions must be made in the narrowest and least expansive manner (word, line, paragraph, page, etc.) necessary to protect the confidentiality of the Respondent's trade secret information. Each redacted submittal copy must have a cover page and page header that is clearly marked as "REDACTED COPY".

Respondents are advised that:

- A. They must only redact the specific information that they, using good faith, believe to be confidential and exempt under applicable state or federal law and should not submit documents that have been broadly marked "CONFIDENTIAL". Exemptions to Florida's broad public records law are narrowly construed and therefore, the County is unable to accept broad designations of confidentiality or exemption from disclosure. Consequently, any such broad classification of trade secret information made by a Respondent may lead to its solicitation response being deemed non-responsive.
- B. As a responsible steward of taxpayer funding and in the interest of transparency and accountability to the general public, the designation of the following information as trade secret information is not acceptable to the County and will therefore lead to a Respondent's solicitation response being deemed non-responsive:
1. Any proposed rates, fees, or prices;
 2. The total bid amount;
 3. The general nature of the services rendered or goods being provided; and
 4. Any information contained in the County's solicitation documents, including the Respondent's answers to any of the questions in the bid response form (not including any impacted submittals).

Any Respondent that submits a solicitation response that in any manner asserts or suggests that information contained therein is the Respondent's trade secret information hereby acknowledges and agrees to all of the following:

- A. To the extent the County deems necessary to effectively handle, process, review, evaluate, and maintain the Respondent's solicitation response, the County and its officials, employees, agents, and representatives are hereby granted full rights to access, view, consider, and discuss any information designated by the Respondent as trade secret information. The County may make copies of, and distribute, the Respondent's unredacted impacted submittals for the purposes of facilitating evaluation of such response.

- B. For auditing purposes, the County may disclose the Respondent's unredacted impacted submittals to the Orange County Comptroller's Office and the County's internal and external auditors. Additionally, should funding for the award be in any part provided by the State of Florida or the Federal Government, the County may also disclose the Respondent's unredacted impacted submittals to such entities for auditing purposes.
- C. Trade secret information is not exempt under the broad open meetings provisions of Florida law. Accordingly, any information that the Respondent designates as trade secret information in its solicitation response may be openly discussed at public meetings that comply with Section 286.011, Florida Statutes. The County will, however, exclude or redact any such designated trade secret information from any records that may result from such public meetings.
- D. The Respondent shall be solely responsible for defending the confidentiality of its designated trade secret information at its sole cost, which action shall be taken in a court of competent jurisdiction located in Orange County, Florida, immediately, but no later than ten (10) calendar days from the date the Respondent receives written notification from the County that a request for information designated by the Respondent as trade secret information was made. Failure of the Respondent to timely file an action to defend the confidentiality of its designated trade secret information shall constitute a waiver by the Respondent of any claim that such information is confidential or exempt from disclosure and will result in the County's release of the requested records.
- E. The Respondent shall hold harmless and indemnify the County, its officials, employees, agents, and representatives from any and all claims, actions, suits, judgments, fines, costs, fees (including attorneys' fees), or damages arising from or related to any designated trade secret information submitted or otherwise provided to the County by the Respondent, including but not limited to those arising from the County's non-disclosure of such information in response to a public records request.
- F. The protection afforded by section 815.045, Florida Statutes, to trade secretion information is incomplete, and no right or remedy for damages shall arise from any disclosure of such information by the County.
- G. The confidentiality protections and records exemptions for any information designated by the Respondent in its solicitation response as being trade secret information shall expire five (5) years from the date of the Respondent's submittal of such response.

Notwithstanding anything to the contrary herein, without assuming any obligation to do so, the County reserves the right to follow up with Respondents to seek clarification and to request additional information regarding any Respondent's confidential trade secret designations.

The [Trade Secret Information Itemization Log](https://www.ocfl.net/vfr) can be found at on the County's Forms and Resources website (<https://www.ocfl.net/vfr>).

2.7. [Bid Acceptance Period](#)

A bid shall constitute an irrevocable offer for a period of one hundred twenty (120) days from the public opening date or until the date of award. In the event that an award is not made by the County within one hundred twenty (120) days from the public opening date, the respondent may withdraw their offer or provide a written extension without modification.

2.8. [Proprietary/Restrictive Specifications](#)

If a prospective respondent considers the specification contained herein to be proprietary or restrictive in nature, thus potentially resulting in reduced competition, they are urged to contact the Procurement Division prior to submittal deadline. Specifications which are unrelated to performance will be considered for deletion via addendum to this solicitation.

2.9. [Surety Requirements](#)

BID BOND

A Bid, Payment and Performance Bond are a requirement when the offer/contract amount exceeds \$100,000. Respondents shall attach an electronic copy of their bid bond for responsiveness. Submission of the bid bond, along with a certified and effectively dated copy of the power of attorney, shall be completed and signed by all required parties and submitted on the form provided in the solicitation. Submittal of a bid bond less than 10% of the total estimated contract amount for base period, shall result in the bid being deemed non-responsive.

In order to be acceptable to the County, the Surety company issuing the Bid Bond shall meet and comply with the minimum standards described in [#Bond Requirements](#), "Qualifications of Surety Companies". Failure to submit a Bid Bond from a Surety Company meeting these minimum standards shall result in rejection of the offer.

ALTERNATIVE SURETY

In the alternative, a Certified Check, or a Cashier's Check shall be required to accompany each electronic offer in a stated dollar amount of not less than ten (10%) percent of the sum of the total estimated contract amount for the base period.

Checks shall be submitted to the Procurement Division; Internal Operations Centre II, 400 E. South Street; 2nd Floor, Orlando, FL 32801 on or before the submission deadline of 4:00 pm EST, Thursday, November 14, 2024.

Respondent's must indicate on the outermost sealed envelope the following:

1. Parks Barnett Park New 100 Ton Redundant Chiller (Y25-711)
2. Deadline: Thursday, November 14, 2024.
3. Name of Respondent
4. Return Address of the Respondent

Submittal of a Certified Check, or a Cashier's Check in an amount less than ten (10%) percent shall result in rejection of the Proposal. Certified checks or cashier's checks shall be drawn on a solvent bank or trust company to the order of the Board of County Commissioners, Orange County, Florida and shall have all

necessary documentary revenue stamps attached, if required by law. Personal checks shall not be accepted and shall result in rejection of the Proposal.

Failure to submit alternative surety prior to the submission deadline of 4:00 pm EST, Thursday, November 14, 2024 shall result in rejection of the entire Proposal (electronic submittal). The time/date stamp clock located in the Procurement Division shall serve as the official authority to determine lateness of any alternative surety. Checks received after the stated deadline will be returned unopened.

2.10. Minority and Women Owned Enterprise Requirements

See [#Business Development](#) section of this solicitation for additional Solicitation Terms and Contract Terms.

2.11. Development or Assistance with Specifications /Requirements /Statements of Work

Firms or individuals that assisted in the development or drafting of the specifications, requirements, statements of work, or documents contained within this Solicitation are excluded from competing for this Solicitation.

This shall not be applicable to firms or individuals providing responses to a publicly posted Request for Information (RFI) associated with this Solicitation.

2.12. No Reciprocal Preference

The County's option to award a reciprocal preference, provided in the Orange County Code of Ordinances, Sec. 17-310, Competitive sealed bid process, is waived and shall not be applicable to this solicitation award.

2.13. Federal and State Tax

The County is exempt from Federal and State Sales and Use Taxes for tangible personal property (Certificate of Registry for tax transactions under Chapter 32, Internal Revenue Code and Florida Sales/Use Tax Exemption Certificate).

Selected Respondents doing business with the County shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the County, nor shall any selected Respondent be authorized to use the County's Tax Exemption Number in securing such materials.

2.14. Award Of Contract/Rejection Of Bids

The Board of County Commissioners will award a Contract to the low, responsive and responsible Respondent, price and other factors considered. The County will award one Contract for this requirement. The Board of County Commissioners, in its sole discretion, reserves the right to reject any and all bids and to waive any informality concerning bid proposals whenever such rejection or waiver is in the best interest of the County. The ability of a Respondent to obtain a performance bond and a payment bond shall not be regarded as the sole test of such Respondent's competency or responsibility. Nothing contained herein shall place a duty upon the County to reject bids or award a Contract based upon anything other than its sole discretion as described herein.

When more than one method of work is prescribed in the solicitation with separate pricing allowed for each method, the County will select the method determined to be in its best interests, price and other factors considered.

Determination of the low Respondent when additive or deductive bid items are involved shall be as follows:

ADDITIVE/DEDUCTIVE BID ITEMS:

- A. If it is deemed to be in the best interest of the County to accept the additive or deductive items, award will be made to the Respondent that offers the lowest aggregate amount for the base bid, plus or minus (in the order listed on the bid form), those additive or deductive bid items that provide the most features of the work.
- B. All bids will be evaluated on the basis of the same additive or deductive bid items.
- C. Failure of the Respondent to provide pricing for all unit priced items and/or the Base Bid and ALL requested additive/deductive bid items, or alternate bids shall be cause for rejection of the bid as non-responsive.
- D. Based on available funding, additives/deducts will be considered based on the prioritization as identified herein (if applicable).

2.15. Solicitation Cancellations

Orange County reserves the right, and the Manager of the Procurement Division, has the absolute and sole discretion to cancel a solicitation at any time prior to approval of the award by the Board of County Commissioners when such approval is required. The decision to cancel a solicitation cannot be the basis for a protest pursuant to the Orange County Code.

2.16. Bid Tabulation and Recommended Award

Solicitation files may be examined during normal working hours, thirty (30) days after public opening, or upon recommendation for award, whichever occurs first. Individuals desiring to view these documents are urged to schedule an appointment. For information concerning this solicitation, please contact the Procurement Division at procurement@ocfl.net or by calling (407) 836-5635. Please specify the solicitation number for which you are inquiring. Solicitation public opening results will be available at <http://apps.ocfl.net/orangebids/bidresults/results.asp>. Unsuccessful respondents will not be notified, unless a request is submitted in accordance with this paragraph.

Public Openings are held each Wednesday at 9:30am and Friday at 9:30am. A public opening of responses will be conducted at the next posted Procurement Public Meeting following the submission deadline. In the event of a County Holiday or unforeseen delay, responses shall remain sealed until the next public meeting.

Firms will be able to attend the public opening virtually, see the following instructions:

Visit: <https://ocfl.webex.com/ocfl/j.php?MTID=m59bb20319c748f1e60a933cf59c7125b>

Meeting number: 286 177 361 Password: Go2Meeting

Join by phone Option 1: 1-408-792-6300 Access code: 286 177 361

Join by phone Option 2: 1-617-315-0740 Access code: 286 177 361

Join by phone Option 3: 1-602-666-0783 Access code: 286 177 361

The physical meeting location is 400 E. South Street, 2nd Floor, Orlando, Florida 32801

2.17. Posting of Recommended Award and Protests

The recommended award will be posted for review by interested parties at the Procurement Division and at:

<http://apps.ocfl.net/OrangeBids/AwardsRec/default.asp> prior to submission through the appropriate approval process and will remain posted for a period of five (5) full business days.

Orange County Lobbyist Regulations General Information

<http://www.orangecountyfl.net/OpenGovernment/LobbingAtOrangeCounty.aspx>

A lobbying blackout period shall commence upon issuance of the solicitation until the Board selects the Contractor. For procurements that do not require Board approval, the blackout period commences upon solicitation issuance and concludes upon contract award.

The County may void any contract where the County Mayor, one or more County Commissioners, or a County staff person has been lobbied in violation of the black-out period restrictions of Ordinance No. 2002-15.

Orange County Protest

Procedures<http://www.orangecountyfl.net/VendorServices/VendorProtestProcedures.aspx>

Failure to file a protest with the Manager, Procurement Division by 5:00 PM on the fifth full business day after posting, shall constitute a waiver of bid protest proceedings.

2.18. Bid and Related Costs

By submission of a bid, the Respondent agrees that any and all costs associated with the preparation of the bid will be the sole responsibility of the Respondent. The Respondent also agrees that the County shall bear no responsibility for any costs associated with the preparation of the bid including, but not limited to, any administrative or judicial proceedings resulting from the solicitation process.

2.19. Contractual Agreement

This Invitation for Bids shall be included and incorporated in the final contract or purchase order. Any and all legal actions associated with this Invitation for Bids and/or the resultant contract shall be governed by the laws of the State of Florida. Venue for any litigation involving this contract shall be the Ninth Circuit Court in and for Orange County, Florida.

2.20. Public Entity Crime

Section 287.133(3)(d), Florida Statutes, provides that the Florida Department of Management Services shall maintain a list of the names and addresses of those who have been disqualified from participating in the public contracting process under this section.

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/convicted_vendor_list

A person or affiliate who has been placed on The Convicted Vendor list following a conviction for a public entity crime shall not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, shall not submit bids on leases of real property to a public entity, shall not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and shall not transact business with any public entity in excess of the threshold amount provided in Florida Statute Section 287.017, for CATEGORY TWO, for a period of thirty-six (36) months from the date of being placed on The Convicted Vendor List.

2.21. Conflict of Interest

The award is subject to provisions of applicable State Statutes and County Ordinances. All respondents must disclose with their bid the name of any officer, director, or agent who is also an employee of Orange County. Further, all respondents must disclose the name of any County employee who owns, directly or indirectly, an interest of ten percent (10%) or more in the Respondent's firm or any of its branches. Should the selected Respondent permanently or temporarily hire any County employee who is, or has been, directly involved with the selected Respondent prior to or during performance of the resulting contract, the contract shall be subject to immediate termination by the County.

2.22. Ethics Compliance

The following forms are included in this solicitation within the **Contract Compliance Packet** and shall be completed and submitted as indicated below:

- Relationship Disclosure Form – The purpose of this form is to document any relationships between a respondents to an Orange County solicitation and the Mayor or any other member of Orange County, Florida. This form shall be completed and submitted with the applicable bid to an Orange County solicitation.

No contract award shall be made unless compliance forms have been completed and submitted. Any questions concerning these forms shall be addressed to the contact identified in this solicitation. Also, a listing of the most frequently asked questions concerning these forms is provided within each form for your information.

2.23. Payment Terms/ Discounts

The County's payment terms are in accordance with Florida Statute 218, Local Government Prompt Payment Act. Cash discounts for prompt payment shall not be considered in determining the lowest net cost for bid evaluation purposes.

2.24. Deviations

Respondents are hereby advised that Orange County will only consider Bids that meet the specifications and other requirements of the solicitation. In instances where a deviation is stated in the Bid form, said Bid will be subject to rejection by the County in recognition of the fact that said Bid does not meet the exact requirements imposed by the solicitation.

2.25. Pricing Errors

If an error is committed in the sub-total extension of an item or the overall total, the unit price as shown in the respondent's submittal will govern.

Errors between any amount computed erroneously, and the correct amount thereof will be resolved in favor of the correct amount based on the unit price.

Any discrepancy between words and numbers will be resolved in favor of the written words.

2.26. Substitute Material And Equipment

The Contract, if awarded, will be on the basis of material and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or accepted "or equal" items.

Whenever materials or equipment or patented processes are specified or described in the Contract Documents by naming a trade name, manufacturer, supplier or proprietary item or catalog number, the naming of the item is intended to establish the type, function and quality required and to establish a basis for bidding. Substitute materials or equipment may be considered after a Contract for the Work is executed if sufficient information is supplied by the selected Respondent to allow Project Manager to evaluate the proposed substitution, unless the naming of the item is followed by words indicating that no substitution is permitted. The procedure for submittal of any such application by Contractor and consideration by Project Manager is set forth in the Contract Terms and Conditions.

In the event that substitute materials or equipment are used and are less costly than the originally specified material or equipment, then the difference in cost of the item shall benefit the County and the selected Respondent in equal proportions.

Applications for substitute materials and equipment shall only be evaluated after the Contract is executed. The Base Bid and Alternates shall reflect the costs for the materials and equipment named or specified only.

2.27. Requested Information and Descriptive Literature

Respondent must furnish all requested information in the spaces provided within the bid submittal or attachments thereto. Additionally, where required pursuant to the provisions of this bid package, Respondents must submit with their bid proposal cuts, sketches, descriptive literature and/or complete specifications relative to the items proposed and offered.

2.28. Modification/Alteration Of Solicitation And/ Or Contract Documents

Modification or alteration of the documents contained in this solicitation or the contract resulting from this solicitation shall only be made upon receipt of prior written consent of the County.

2.29. Contract Documents (Project)

The Contract Documents shall include the documents stated in the Contract (Titles, Subtitles, Headings, Running Headlines, Table of Contents and Indexes are used merely for convenience purposes).

2.30. Laws And Regulations

The Respondent's attention is directed to the fact that all applicable Federal and State laws, municipal and county ordinances, and the rules and regulations of all authorities having jurisdiction over any part of the project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though herein written.

Respondents are hereby provided notice of the provisions of Section 287.05701, Florida Statutes

2.31. Execution Of Written Contract (Project)

The successful Respondent will be required to sign a written Contract which has been made a part of this bid package and identified as the [#Required Contract](#). Said written Contract will evidence in written form the agreement between the parties pursuant to the award having been theretofore made by the County to this Respondent; said signing to be accomplished within ten (10) days after receipt of Notice of Award.

The County will issue an "Official Notice to Proceed" on the project within ninety (90) days after contract award. In the event the Official Notice to Proceed has not been issued by the County within the 90 day period above, the selected Respondent shall have the option to rescind the Contract or continue with the Contract as originally bid.

2.32. Indemnification For Tort Actions/Limitation Of Liability

The provisions of Florida Statute 768.28 applicable to Orange County, Florida apply in full to this Contract.

Any legal actions to recover monetary damages in tort for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the County acting within the scope of his/her office or employment are subject to the limitations specified in this statute.

No officer, employee or agent of the County acting within the scope of his/her employment or function shall be held personally liable in tort or named as a defendant in any action for any or damage suffered as a result of any act, event, or failure to act.

The County shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of his/her employment. This exclusion includes actions committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

2.33. Licensing Requirements for Projects

The following licensing requirements shall apply when the applicable Florida statute mandates specific licensing for Contractors engaged in the type of work covered by this solicitation.

- A. State of Florida, Department of Professional Regulation, Construction Industries Licensing Board and licensed by other federal, state, regional, county or municipal agencies having jurisdiction over the specified construction work.

- B. Said licenses shall be in the Respondent's name as it appears on the Official Bid Form. Respondent shall supply appropriate license numbers, with expiration dates, as part of their bid. Failure to hold and provide proof of proper licensing, certification and registration shall be grounds for rejection of the bid.
- C. Respondent shall provide copies of all applicable licenses with their Bid Proposal.
- D. Subcontractors contracted by the Prime Contractor shall be licensed in their respective fields to obtain construction permits from the County. Said licenses must be in the name of the subcontractor as listed within the bid submittal.

2.34. Trench Safety Act

Pursuant to Chapter 90-96 (CS/SB 2626), Laws of Florida, "Trench Safety Act", any person submitting a Bid is required to comply with **FLORIDA TRENCH SAFETY ACT (90-96, LAWS OF FLORIDA)**, if applicable only.

This is not a pay item. The purpose of this form is to gather information on the costs associated with trench safety measures and to insure that the Respondent has considered these costs and included them in the Base Bid. If this form is applicable, failure to complete this form may result in the Bid being declared non-responsive. If applicable, Respondents shall submit this form as an attachment.

The Compliance with [Florida Trench Safety Act Form](#) can be found at on the County's Forms and Resources website (<https://www.ocfl.net/vfr>).

2.35. Subcontractor's Past Performance

Respondent is responsible for verifying subcontractor's satisfactory performance on previous Orange County projects. Failure to do so may impact Respondent's responsibility determination

2.36. Occupational Safety And Health Act (O.S.H.A.)

All material, equipment, etc., to be incorporated into the resultant contract shall meet and conform to all O.S.H.A. requirements; by submission of a bid Respondent certifies their compliance with this requirement.

2.37. Required Disclosure

Respondent shall disclose with its bid submission all material facts pertaining to any felony indictments or convictions in the last ten (10) years, or any pending felony charges, anywhere in the United States against (i) Respondent, (ii) any business entity related to or affiliated with Respondent, or (iii) any present or former executive employee, senior management, key employee, officer, director, stockholder, partner or owner of Respondent or of any such related or affiliated entity, collectively referred to as "Respondent." This disclosure shall not apply to any person or entity who is, or was, solely a stockholder, owning less than 5% of the outstanding shares of a Respondent whose stock is publicly owned and traded.

Respondent shall disclose any civil citations, infractions, or convictions for any reason in the last ten (10) years involving Respondent, including all material facts.

Respondent shall disclose any civil litigation, administrative proceeding, or notice of default during the last five (5) years, anywhere in the United States, in which Respondent or any business controlled by or affiliated with Respondent is, or was, a party.

The County may reject, at its sole discretion, any Respondent if the County finds Respondent or its present or former executive employees, senior management, key employee, officers, directors, stockholders, partners, affiliates, or owners lack honesty, integrity, or moral responsibility. The County may also reject, at its sole discretion, any Respondent if it is in the County's best interest to do so. The County may base its findings on the disclosures required herein, the County's own investigation, public records, or any other reliable source of information. The County may also reject any Respondent that fails to make the disclosures required herein. By submitting a bid, Respondent recognizes and accepts that the County may reject any bid at its sole discretion and the Respondent waives any claim it might have for damages or other relief arising from the rejection of its bid or resulting directly or indirectly from the rejection of its bid based on these grounds or from the disclosure of any information related to the reasons for rejection of its bid.

[2.38. Debarment, Suspension, Ineligibility and Voluntary Exclusion](#)

By submission of an offer Respondent affirms that it is in compliance with the requirements of 2 C.F.R. Part 180 and that neither it, its principals, nor its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

[2.39. Florida Convicted/Suspended/Discriminatory Complaints](#)

By submission of an offer Respondent affirms that it is not currently listed in the Florida Department of Management Services Convicted/Suspended/Discriminatory Complaint Vendor List.

[2.40. Anti-Human Trafficking](#)

Respondents shall confirm that they do not engage in or permit the use of coercion for labor or services as defined in Section 787.06(2), Florida Statutes. **Failure to confirm shall deem the offer non-responsive.**

Section 787.06(2), Florida Statutes, defines "coercion", "labor", and "services" as follows:

- **"Coercion"** means: **(1)** using or threatening to use physical force against any person; **(2)** restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; **(3)** using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; **(4)** destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; **(5)** causing or threatening to cause financial harm to any person; **(6)** enticing or luring any person by fraud or deceit; or **(7)** providing a controlled substance as outlined in Schedule I or Schedule II of Section [893.03](#),

Florida Statutes, to any person for the purpose of exploitation of that person.

- **“Labor”** means work of economic or financial value.
- **“Services”** means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.

Execution of any contract resulting from the award of this solicitation shall require respondents to attest, under penalty of perjury, that Contractor does not use coercion for labor or services as defined in Section 787.06(2), Florida Statutes. Respondents are cautioned to review this form in detail as it is a firm requirement of the Contract. The [Human Trafficking Affidavit](#) can be found at on the County's Forms and Resources website (<https://www.ocfl.net/vfr>).

3. Scope of Services / Specifications

3.1. [Location of Solicitation Documents](#)

OVERVIEW:

Replacement of the existing single 155-ton chiller with two (2) 100-ton chillers in parallel operation.

Please refer to the section titled [#Solicitation Documents](#) to access all necessary technical documentation and attachments related to this solicitation.

4. Business Development

Internal Operations Centre II, 2nd Floor | 400 E South Street, Orlando, FL 32801

Phone: (407) 836-7317 | Fax: (407) 836-5477 |

BusinessDevelopment@ocfl.net <https://www.orangecountyfl.net/VendorServices/MinorityVendors.aspx>

4.1. SOLICITATION TERMS: MINORITY/WOMEN OWNED BUSINESS ENTERPRISES

- A. To provide for the participation of certified minority and women owned businesses (M/WBE's) in the County's procurement of construction services, Bidders submitting bids to the County are encouraged to comply with M/WBE subcontracting goals established by the County Minority/Women Business Enterprise Ordinance, No. 94-02 and amended by Ordinance No.2009-21.
- B. The overall goal for all bids (inclusive of all additive and deductive alternates) is 25% (twenty-five percent) participation of the contract value for this contract for M/WBE subcontractors and suppliers. Upon Contract award the Contractor must meet the M/WBE expenditure required by the Contract.
- C. Each M/WBE utilized to meet the project goal must be listed as a subcontractor on the required Contract and Sub-Contract Goal Participation Schedule. If there are any pre-qualifications required by the firm, then this must be provided to the M/WBE when they are solicited for interest in the bid. This required information must be completed prior to bid submittal.
- D. The Ordinance also addresses minority/women group employment levels setting goals to encourage each Bidder to maintain 18% minority and 6% women employees.

Note: Only 50% of material/supply dollars purchased from M/WBE distributors is applied toward the goals for minority and women business enterprise participation on construction projects. Contractor shall list **the total amount of material/supply dollars** to be purchased from each M/WBE distributor on the required Contract and Sub-Contract Goal Participation Schedule. **The County will calculate the actual dollars applied toward the goals.**

- E. **Goals for bids under \$100,000.** There are M/WBE goals for all bids including bids for IFB estimated to be less than \$100,000 (inclusive of all additive and deductive alternates).
- F. **Orange County M/WBE Certification Requirement**
 - 1. **All participating M/WBEs must be certified by Orange County for the specific Scope of Work for which they will be providing the Bidder in order to count toward meeting this IFB's goal.** The Business Development M/WBE Directory is available by e-mail or through the Orange County web site at <http://www.orangecountyfl.net>.

2. Only firms having established offices in the Orlando MSA (Orange, Lake, Seminole and Osceola Counties) are eligible for Orange County certification. All M/WBEs must be certified prior to bid opening and must be certified in the area(s) for which they will be used. If a firm claims to be certified, but is not listed in the Directory, Contractor should obtain a copy of their Certificate and/or contact the Business Development Division Liaison for verification of certification.

G. The M/WBE Graduate Program

1. Under the M/WBE Graduate Program, **utilization of M/WBE firms designated as graduates shall count toward meeting M/WBE participation goals only on specified projects.** All construction solicitations for which the County has determined the overall contract amount to be awarded to the prime in excess of \$10,000,000 for vertical construction, \$7,000,000 for horizontal construction and \$7,000,000 for all other construction are eligible for graduate M/WBE participation.
2. Vertical construction is any construction of a structure or building which requires a general or building contractor's license. Horizontal construction includes but is not limited to roadwork, site work, drainage or utilities work. Other construction is any construction other than what is defined as vertical or horizontal construction.
3. The Bidder's total base bid, which is used by the Procurement Division as the basis for determining Contract award value, will be used to determine if graduated M/WBE firms are eligible to participate. If the contract has option provisions, the total base Bid is the total of the Basic Contract Year plus all Option Years. Prime contractors will receive full M/WBE credit for the use of graduated M/WBE's that meet all other requirements.
4. **It is the Bidder's responsibility to ensure that graduate M/WBE's are not listed in bid to meet M/WBE participation requirements on projects in which they are not eligible to participate.**

H. M/WBE Bidders Competing as Primes

1. If an M/WBE firm bidding as a prime certifies with his/her bid that it will self-perform 51% percent or more of the project, as evidenced by the required Contract and Sub-Contract Goal Participation Schedule, then that firm will not be required to comply with the M/WBE subcontracting goals.
2. **Failure to include the percentage of work and the scope of work to be self-performed, and the dollar amount for the work an M/WBE Bidder competing as a prime intends to self-perform will result in the M/WBE Bidder receiving zero M/WBE participation for the bid.**
3. **However, if the M/WBE Bidder will not be self-performing at least 51% percent of the project, then he/she must comply with the M/WBE participation goal, and good faith**

effort documentation required from non-M/WBE Bidders to receive M/WBE compliance consideration.

I. Subcontracts/Purchase Orders

1. The successful Bidder shall provide a copy of all fully executed subcontracts and/or purchase orders issued to M/WBE's listed on the required Contract and Sub-Contract Goal Participation Schedule to the Business Development Division Liaison. Submittal of these subcontracts/purchase orders is a condition precedent to execution of the prime Contract by the County.
2. The Contractor **must** include in the subcontract agreement:
 - a. Prompt Payment Clause to the M/WBE subcontractor.
 - b. Payment schedule in all subcontracts and purchase orders (including those with non-M/WBE's) stating that payment will be made to the Subcontractor/suppliers within 72 hours of receipt of payment from the County.
 - c. The sub-contract agreement shall include: (a) the percentage of the overall contract value; and (b) the dollar amount based on the percentage of the contract value (if available at the time of the sub-contract agreement).
 - d. The following statement:
"It is the M/WBE responsibility to submit the required subcontractor's Monthly M/WBE workforce reports to the prime, monthly payment verification and Final M/WBE payment verification form to Business Development Division.

The M/WBE's failure to submit the required documents could negatively impact their M/WBE re-certification.

Notwithstanding any termination provisions in this Subcontract Agreement, the Prime Contractor shall not terminate this Subcontract Agreement without prior written authorization of the Orange County Business Development Division Manager, nor shall the Prime Contractor amend this Subcontract Agreement, or reduce the Scope of Work or monetary value awarded under this Subcontract Agreement, without prior written authorization of the Orange County Business Development Manager.

This provision in no way creates any contractual relationship between any Subcontractor and Orange County or any liability on Orange County for the Contractor's failure to make timely payments. The timeliness of such payments may be evaluated by the Business Development Division in considering compliance with the Ordinance."

- e. All sub-contract agreements shall be contingent upon the term (whether terminated, renewed or extended) of the Prime's contract with the County.
3. The awarded prime contractor's responsibilities and requirement are as follows:
 - a. File copies of all executed subcontracts/agreements between the prime and all M/WBE subcontractors on the project to Orange County Business Division one time for the duration of the contract.
 - b. The Contractor shall submit an updated Prime Monthly Contractor's Workforce Report, Subcontractor's Workforce Report and Monthly Prime Contractor's Report for all construction contracts monthly, and any additional reports deemed by the County as necessary for M/WBE subcontractor utilization reporting purposes.
 - c. The Contractor shall notify the Business Development Division of any additional awards to the M/WBE firm on the Contractor's team and the addition of any new M/WBE firm to the Contractor's team on the project.
 - d. The Contractor shall expeditiously advise all M/WBE's and the Business Development Division of all change orders, contract modifications, additions and deletions to any and all contracts issued to the M/WBE(s) on the team.
 - e. Furnish copies of subcontracts/purchase orders for the non-M/WBE's listed on the required Contract and Sub-Contract Goal Participation Schedule. Also, provide a list of all non-M/WBE subcontractors and suppliers that have a prompt payment clause included in their subcontract agreement or purchase order.
 - f. Notwithstanding any termination provisions in this Subcontract Agreement, the Prime Contractor shall not terminate this Subcontract Agreement without prior written authorization of the Orange County Business Development Division Manager, nor shall the Prime Contractor amend this Subcontract Agreement, or reduce the Scope of Work or monetary value awarded under this Subcontract Agreement, without prior written authorization of the Orange County Business Development Manager.
 4. Execution of the contract between Orange County and the bidder shall be contingent upon the filing of executed subcontract(s) between the bidder and the M/WBE sub-contractors listed on the required Contract and Sub-Contract Goal Participation Schedule.
 5. The County may, at its discretion, require copies of subcontracts/purchase orders for the non M/WBE's listed on the required Contract and Sub-Contract Goal Participation Schedule. However, if this option is not exercised, the awarded Contractor **must** provide a list of all non M/WBE Subcontractors and suppliers certifying that a prompt payment clause has been included in that Contract or purchase order.

J. Good Faith Effort Documentation Requirements

1. If the established goals are not achieved, to maximize consideration for M/WBE participation, Bidders **must** submit sufficient documentation to substantiate that **ALL FIVE** of the mandatory efforts listed below were undertaken as part of the bid response.
2. Bidders meeting or exceeding the goals do not need to provide good faith effort documentation. If the bidder does not achieve the M/WBE goal, Good Faith Effort documentation is required. **If Good Faith Effort documentation is not submitted to address all five (5) required actions, the bid shall be deemed non-responsive.**
3. **REQUIRED ACTION #1:** Required Notice to M/WBEs
 - a. If a bidder desires to meet the good faith effort documentation requirements he/she must provide written notice to certified M/WBEs, **as it relates to the scopes of services in the bid documents**, that the Bidder intends to subcontract.
 - b. The notice shall be by e-mail or fax, no fewer than seven (7) calendar days prior to bid opening. All e-mails and faxes shall include the legal name of the M/WBE firm. The notice **shall** advise all of the following:
 - i. The M/WBE's interest in the contract is being solicited.
 - ii. The specific work the Bidder intends to subcontract.
 - iii. How to obtain information about and review the contract plans and specifications.
 - iv. Information on bonding, insurance and other pertinent requirements.

Note: All requirements as it relates to the bonding, insurance and pre-qualifications must be given to the M/WBE's at the time the notice is provided. This information must be received and decisions to utilize the M/WBE must be known and denoted on the required Contract and Sub-Contract Goal Participation Schedule prior to the bid submittal.
 - v. The deadline for bid or proposal submissions to the Bidder and the bid due date to the County.
 - vi. **That the Bidder will provide the M/WBE no less than 24 hours' notice of all addenda.**

Note: Evidence that the Bidder actually provided such 24 hours' notice of all addenda issued by the County to the M/WBEs will be required.
4. **REQUIRED ACTION #2:** The prime contractor shall list the divisions of contract work not subcontracted and provide an explanation why the M/WBE goals were not achieved.
5. **REQUIRED ACTION #3:** Bidders shall follow up initial submittals of interest by contacting M/WBEs and documenting using a contact log, which shall include the firm's name address,

contact information (e-mail, telephone and/or fax numbers), scope of work requested, the date, name of person making the effort, denote if M/WBEs will bid, time quote received and notes denoting if plans and specifications were sent. Each bidder shall use the standardized contact log, included on the County's Good Faith Effort Form.

6. **REQUIRED ACTION #4:** In instances where a non-M/WBE contractor is listed for work for which M/WBE availability exists, the Bidder shall submit **ALL** quotations received from M/WBE's **AND** the listed non-M/WBE **within twenty-four (24) hours, if it is determined that the bidder is one of the three (3) apparent low Bidders**. The Bidder shall provide an explanation as to why the M/WBE's quotations were not accepted.

Note: Receipt of a lower quotation from a non-M/WBE prior to bid opening will not in itself excuse a Bidder's failure to meet M/WBE participation goals. However, a Bidder's good faith effort obligation does not require a Bidder to accept a quotation from a M/WBE which is an unreasonable price. For the purpose of this subsection, "unreasonable price" means a price above (or below) competitive levels which cannot be attributed to the M/WBE's attempt to cover costs inflated by the present effect of discrimination. Bidders shall not reject an M/WBE as unqualified without sound reasons based on a thorough and documented investigation of that M/WBE's capabilities.

7. **REQUIRED ACTION #5:** The Contractor shall contact the Business Development Division staff as a resource to obtain M/WBE participation. In order for the Bidder to receive credit for meeting this requirement, such contact must be completed by email sent to the following address: BusinessDevelopment@ocfl.net.
8. If, after Contract award, Prime Contractors who have not achieved the M/WBE participation goals choose to subcontract work indicated as being self-performed without prior written approval of the Business Development Division, the matter will be reported to the Procurement Division for consideration in the event the contractor competes for future County contracts.

K. Good Faith Effort Credits.

1. If the Bidder fails to meet one of the first **four** good faith effort requirements listed above, then the Bidder will be permitted to substitute **one (1)** of those requirements with documentation showing one of the following:
 - a. The National Entrepreneur Center (NEC), formerly known as the Disney Entrepreneur Center (DEC), was used to host a workshop that informed M/WBE firms how to better prepare for sub-contracting opportunities.
 - b. The Contractor has participated in Orange County Business Development Division's sponsored "How to do Business" workshop.

- c. The Contractor has sponsored a match-maker event with certified M/WBE firms. Enclose a copy of the certificate provided to your firm when the service was successfully completed.
2. The above discussed substitution will only count towards **one (1)** good faith effort requirement and all other good faith requirements must be met. **Please note that REQUIRED ACTION #5 is always required and cannot be substituted.**

4.2. RESERVED RIGHTS

Notwithstanding anything to the contrary herein, without assuming any obligation to do so, the County reserves the right to follow up with – at minimum – the three (3) lowest Bidders for supplemental submission of good faith effort information and/or to provide such bidders with the opportunity to correct any forms submitted for the purpose of evaluating compliance with this IFB's M/WBE requirement. Any such opportunity to supplement or correct granted to a bidder by the County under this provision shall expire at 11:59pm county local time on the second full county business day after the day on which such bidder received the County's request for supplementation or correction. There will be no additional time or consideration granted by the County thereafter.

4.3. CONTACT INFORMATION

Bidders are encouraged to contact the Business Development Division for additional guidance and assistance at BusinessDevelopment@ocfl.net.

4.4. CONTRACT TERMS: MINORITY/WOMEN OWNED BUSINESS ENTERPRISE REQUIREMENTS

The Contractor will comply with all requirements of Orange County's Minority/Women Owned Business Enterprise Ordinance No. 94 01, as amended by Ordinance No. 2009-21. In summary, the ordinances establish a goal of 25% of the County's annual monetary value of contracts be awarded to minority/women owned business enterprises meeting Contract specifications.

The goals for work force employment levels are 18% minority and 6% women. Other provisions of the Ordinance as it pertains to construction projects may be found in the "Solicitation Terms: Minority/Women Owned Business Enterprises" section of the IFB.

To facilitate monitoring for compliance with the Ordinance:

- A. The Contractor **must** submit:
 1. A Monthly Prime Workforce Report (Current Field Employment Data). Contractor shall also ensure that all Subcontractors/suppliers with contracts over \$50,000 supply a Monthly Sub Workforce Report. Subcontractors with a Trucking and Supplier scope are exempt from sub workforce reports; and
 2. A Monthly Prime Contractor's Report.

The Contractor shall furnish monthly payment verification form(s) evidencing actual dollars

paid to each Subcontractor/supplier listed and/or utilized by the Contractor. This will include, but not be limited to: copies of canceled checks, approved invoices, and signed, sworn affidavits certifying the accuracy of payments so that the County may determine actual participation achieved by the Contractor prior to issuance of final payment.

The required reports are to be submitted to the Business Development Division Liaison no later than the fifth day of each month beginning one month after the Work begins and to continue until Final Completion of the project/contract. Failure to submit such reports in a complete and timely manner may result in withholding of payment or termination of this Contract for cause.

The final Prime Contractor's Report M/WBE Utilization Report must be signed by the Contractor's authorized agent certifying that all information contained therein is a true and accurate account of M/WBE utilization per the bid and contract documents. Approval of the final Application for Payment is contingent upon receipt of this certification.

- B. The Contractor **must** not substitute, replace or terminate any M/WBE firm without **prior written authorization from the Orange County Business Development Division Manager**, nor shall the Contractor reduce the scope of work or monetary value of a subcontract without prior written authorization of the Business Development Manager. All modifications, additions and deletions to any and all Contracts issued to said M/WBE's must also have prior written authorization of the Business Development Division Manager. If a substitution of a different M/WBE subcontractor is approved by the Business Development Division Management, the new subcontract must have the same terms as required in the "Subcontracts/Purchase Orders" subsection of the "Solicitation Terms: Minority/Women Owned Business Enterprises" section of the IFB.
- C. The Contractor shall expeditiously advise all M/WBE's and the Business Development Division Liaison of all Change Orders, contract modifications, additions and deletions to any and all contracts issued to said M/WBE's.
- D. Failure of the Contractor to adhere to the provisions of the Ordinance may subject the Contractor to penalties as outlined in Sec. 17-326 of the Ordinance. The penalties include:
1. Liquidated damages up to 10% of the Contract;
 2. Suspension or permanent debarment from bidding;
 3. Termination of any present contracts;
 4. Withholding retainage;
 5. A negative evaluation of good-faith effort on future bids;
 6. Withholding of payments.

5. Insurance Requirements

5.1. Insurance Requirements

The Contractor shall maintain on a primary basis and at its sole expense, at all times throughout the duration of this Contract the following types of insurance coverage with limits and on forms (including endorsements) as described herein. These requirements, as well as the County's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities assumed by Contractor under this Contract. The Contractor shall maintain any coverage required by federal and state workers' compensation or financial responsibility laws including but not limited to Chapter 324 and 440, Florida Statutes, as may be amended from time to time. Insurance carriers providing coverage shall be authorized and/or eligible to do business in the State of Florida and shall possess a current A.M. Best's Financial Strength Rating of A- Class VIII.

The Contractor shall require and ensure that each of its subcontractors maintain insurance until the completion of their work under any contract associated with this Contract. Failure of the Contractor to maintain insurance coverage for itself or for any other persons or entities for whom it is responsible or to ensure that its subcontractors maintain coverage shall not relieve the Contractor of any contractual responsibility, obligation or liability.

If the CONTRACTOR intends to bid on this Contract as a Joint Venture then all insurance coverage required herein shall include the Joint Venture as "named insured". If the Joint Venture has no employees then this requirement is waived for workers' compensation. The Joint Venture shall also purchase discontinued completed operations coverage for any claims made after the dissolution of the Joint Venture. This coverage shall be for a period of two years following final completion of the project or continuing service contract.

The minimum types and amounts of insurance inclusive of any amount provided by an umbrella or excess policy, shall be as indicated herein.

When a self-insured retention or deductible exceeds \$100,000 the County reserves the right to request a copy of the Contractor's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis the Contractor agrees to maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract the Contractor agrees to purchase the SERP with a minimum reporting period of not less than two years. Purchase of the SERP shall not relieve the Contractor of the obligation to provide replacement coverage.

The Contractor shall be responsible for all risk of loss whether insured or not until final acceptance of the project by the County. The Contractor agrees to be fully and solely responsible for any costs or expenses resulting from a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the application of said deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. The County has the right to request that the Contractor procure and maintain a surety bond for any deductible amounts that exceed any amount stated herein in such amount and on such form that are acceptable to the County.

The County reserves the right, but not the responsibility to periodically review any and all policies of insurance and to reasonably adjust the limits and/or types of coverage required herein, from time to time throughout the term of this Contract. In such event, the County will provide the Contractor written notice of such adjustments and the Contractor shall comply within thirty (30) days of receipt thereof. Any request for an exception to these insurance requirements must be submitted in writing to the County for approval.

The Contractor agrees to specifically include the County as an Additional Insured on the Commercial General Liability policy with a CG 20 37 – Additional Insured - Owners, Lessees or Contractors-Completed Operations or CG 20 10 – Additional Insured-Owners, Lessees or Contractors-Scheduled Person or Organization Endorsement, or their equivalent. The Contractor shall also specifically include the County as an Additional Insured on any Commercial Umbrella or Excess policies unless the County is automatically defined under the policy as an Additional Protected Person. Additionally, the Contractor agrees to specifically include the County as an Additional Insured under the Contractor’s Pollution Liability coverage (when applicable). The name of the organization identified in each Additional Insured endorsement’s schedule shall read Orange County, Florida.

The Contractor agrees by entering into this written Contract to provide a Waiver of Subrogation in favor of the County, Contractor, Professional, and sub-contractors of any tier for each required policy providing coverage during the life of this Contract. When required by the insurer, or should a policy condition not permit an endorsement, the Contractor agrees to notify the insurer and request that the policy(ies) be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement or voids coverage should the Contractor enter into such an agreement on a pre-loss basis.

Before execution of this Contract by the County and the start of any Work and for the duration of this Contract, the Contractor shall provide the COUNTY with current certificates of insurance evidencing all required coverage. The certificates shall clearly indicate that the Contractor has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNTY. Certificates shall specifically reference the project title and contract number. The certificate holder shall read:

**Orange County, FL
C/O Risk Management Division
109 E. Church Street, Suite 200
Orlando, Florida 32801**

Prior to commencement of any Work performed by subcontractors (if any), the Contractor shall obtain certificates of insurance evidencing coverage from each of its subcontractors and shall furnish within five days, copies of said certificates upon request by the County. In addition to the certificate(s) of

insurance the Contractor shall also provide a blanket or specific additional insured endorsement and all waivers of subrogation or transfer of rights of recovery endorsements for each policy.

Failure of the County to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the County to identify a deficiency from evidence provided will not be construed as a waiver of the Contractor's obligation to maintain such insurance.

5.2. Workers' Compensation

The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits (see below) for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the County. The County will not accept elective exemptions. Any contractor using an employee leasing company shall complete the County's [Leased Employee Affidavit](#).

Schedule of Limits for Employer's Liability

- Contract Amount Up to \$10 Million: Statutory/\$500,000
- Contract Amount \$10 to \$20 Million: Statutory/\$1,000,000
- Contract Amount Over \$20 Million: To Be Determined by the County

Required Endorsements

- Waiver of Subrogation- WC 00 03 13 or its equivalent

5.3. Commercial General Liability

The Contractor shall maintain coverage issued on an ISO form CG 00 01 or its equivalent, with a limit of liability of not less than the limits indicated in the Schedule of Limits (see below). Contractor further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Independent Contractors, Contractual Liability, or Separation of Insureds. The General Aggregate limit shall either apply separately to this Contract or shall be at least twice the required occurrence limit.

All projects with a Contract Amount greater than \$20,000,000 shall be written on a Designated Premises or Projects basis. Commercial umbrella and excess coverage shall include liability coverage for damage to the Contractor's completed work equivalent to that provided under ISO Form CG 00 01 04 13.

Schedule of Limits for Commercial General Liability

- Contract Amount Up to \$10 Million: \$1,000,000
- Contract Amount \$10 to \$20 Million: \$5,000,000
- Contract Amount Over \$20 Million: To Be Determined by the County

Required Endorsements

- Additional Insured- CG 20 10 04 13 and CG 20 37 04 13 or its equivalent

- Waiver of Subrogation- CG 24 04 05 09 or its equivalent

Note: If blanket endorsements are being submitted please include the entire endorsement. The policy number to which the endorsement applies shall be indicated directly on the endorsement.

5.4. Business Automobile Liability

The Contractor shall maintain coverage for all owned; non owned and hired vehicles issued on ISO form CA 00 01 or its equivalent, with limits of not less than the limits indicated in the Schedule of Limits (see below). In the event the Contractor does not own automobiles the Contractor shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Schedule of Limits for Commercial General Liability

- Contract Amount Up to \$10 Million: \$1,000,000
- Contract Amount \$10 to \$20 Million: \$5,000,000
- Contract Amount Over \$20 Million: To Be Determined by the County

5.5. Builders' Risk

If this Contract includes: (1) construction of a new above-ground structure or structures, (2) any addition, improvement, alteration, or repair to an existing structure or structures, or (3) the installation of machinery or equipment into an existing structure or structures, the Contractor shall maintain builders' risk insurance providing coverage to equally protect the interests of the County, the Professional, the Contractor and subcontractors of any tier. Coverage shall be written on a completed value form in an amount at least equal to 100% of the estimated completed value of the project plus any subsequent modifications of that sum.

The coverage shall be written on an "all-risk" basis and shall, at a minimum cover the perils insured under the ISO CP 10 30 Special Causes of Loss Form and shall include property in transit and property stored on or off premises, which shall become part of the project. The Contractor agrees not to maintain a wind or flood sub-limit less than 25% of the estimated completed value of the project. The Contractor agrees any flat deductible(s) shall not exceed \$25,000, and any wind percentage deductible (when applicable) shall not exceed five-percent (5%). The coverage shall not be subject to automatic termination of coverage in the event the project/building is occupied in whole or in part, or put to its intended use, or partially accepted by the County. If such restriction exists the Contractor shall request that the carrier endorse the policy to amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the County's interest in the project ceases, or the project is accepted and insured by the County.

5.6. Contractor's Pollution Liability

The Contractor agrees to maintain Contractor's Pollution Liability with a limit of not less than \$1,000,000 per occurrence on a per-project basis.

5.7. Indemnification

Subject to the limitations in the third paragraph under this heading, the Contractor shall defend, indemnify and hold harmless the County, its agents and employees from and against all liabilities, claims, damages, losses, costs and expenses (including attorney's fees) arising out of or resulting from the performance of the Work, provided that any such liability, claim, damage, loss, cost or expense:

- is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and,
- is caused in whole or in part by any act or omission 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, regardless of whether or not it is caused in whole or in part by a party indemnified hereunder.

The Contractor hereby acknowledges receipt of One Hundred Dollars (\$100) and other good and valuable consideration from the County as consideration for the indemnification provisions in this Contract.

In any and all claims against the County, its agents or employees; employees of the Contractor and subcontractor; all persons directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under the previous paragraph shall not be limited in any way as to 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 other employee benefit acts.

The indemnification obligations of the Contractor under this section shall not extend to the liability of the Professional and its agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or the giving or the failure to give requested interpretations by the Professional and their agents or employees, provided such giving or failure to give is the primary cause of injury or damage.

The Contractor shall defend, indemnify and hold harmless the County and anyone directly or indirectly employed by it from and against all claims, damages, losses and expenses (including attorney's fees) arising out of any infringement of patent rights or copyrights held by others during or after completion of the Work, and shall defend all such claims in connection with any alleged infringement of such rights.

Provided however, if this Contract is deemed by a court of competent jurisdiction to be a construction contract under Section 725.06, Florida Statutes, any obligation of the Contractor to defend, indemnify or hold harmless the County, its officers and employees shall be limited to an obligation to indemnify and hold harmless to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.

The indemnification provisions contained herein shall survive the termination of this Contract.

6. Bond Requirements

6.1. Required Templates

The required Bond Templates are provided on the County's Forms and Resources website (<https://www.ocfl.net/vfr>).

Respondents are cautioned to refrain from editing the template structure and requirements, any such deviations shall result in rejection of the offer.

- [Bid Bond Template](#)
- [Payment Bond Template](#)
- [Performance Bond Template](#)

6.2. Qualifications of Surety Companies

In order to be acceptable to the County, a Surety company issuing the Bid Bond, the Performance Bond, and the Payment Bond, if called for in these Specifications, shall meet and comply with the following minimum standards:

- A. Surety must be admitted to do business in the State of Florida and shall, if applicable, comply with the provisions of Florida Statute 255.05.
- B. Surety must be listed on the U.S. Department of Treasury Fiscal Service, Bureau of Government financial Operations, Federal Register, Part V, latest revision, entitled: "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies".
- C. All bonds shall be originals and issued or countersigned by a producing agent. Satisfactory evidence of the authority of the person or persons executing such bond shall be submitted with the bond. Attorneys in fact who sign Bid bonds or performance/payment bonds must file with such bond a signed, certified copy of their power of attorney to sign such bond.

Agents of Surety companies must list their name, address and telephone number on all Bonds.

- D. The life of the bonds shall extend twelve (12) months beyond the end of the Contract term and shall contain a waiver of alteration to the terms of the Contract, extensions of time, and/or forbearance on the part of the County.
- E. Surety must have financial standing having a rating from A.M. Best Company (or other equivalent rating company) equal to or better than A- Class VI.
- F. Should the Bid, Payment, and Performance Bonds be issued by co-sureties, each surety listed on the bond shall meet the requirements in paragraphs A. – E. above. In addition, each surety shall submit a power of attorney and all signatures of the co-sureties representatives shall be

notarized. The “lead” surety shall be identified for the purposes of underwriting and claims management.

FAILURE TO MEET ANY OF THE REQUIREMENTS CONTAINED ABOVE SHALL RESULT IN REJECTION OF THE OFFER.

6.3. Payment and Performance Bond

Upon notice of award, when the contract amount exceeds \$100,000, the Contractor shall execute and deliver to the County the Payment (See: [Payment Bond Template](#)) and Performance Bonds (See: [Performance Bond Template](#)) as security for the faithful performance and completion of the Work and payment for all materials and labor furnished or supplied in connection with all Work included in the Contract Documents.

These Bonds shall be in amounts at least equal to the Contract Amount, shall name the County as obligee, and shall be in such form and by sureties of financial standing having a rating from A.M. Best Company (or other equivalent rating company) equal to or better than A- VI and must be included on the approved list of sureties issued by the United States Department of Treasury.

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 it may require. If such Bonds are required by written instructions given prior to opening of Bids, the premium shall be paid by the Contractor. If the Contract Amount is increased by Change Order, the Contractor shall insure that the Payment and Performance Bonds be amended accordingly and a copy of the amendment is forwarded to the County.

The Contractor shall record the payment and performance bonds in Orange County public records as required by Florida Statutes, Chapter 255.05. Before commencing the work the Contractor shall provide to the Manager of the Procurement Division a certified copy of the recorded bonds. No payment will be made to the contractor until the contractor has provided a copy of the recorded bonds.

If the Surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any State where any part of the Work is located or it ceases to meet the requirements imposed by the Contract Documents, the Contractor shall within five (5) days thereafter substitute another Bond with another Surety both of which shall be acceptable to the County.

6.4. Security Forfeiture

When Bid security has been required, if within ten (10) days after notification by the County of the County's approval to award the Contract the successful Respondent refuses or otherwise neglects to execute the required written Contract and fails to furnish the required Performance Bond and Payment Bond, the amount of the Respondent's Bid security (Cashier's Check or Bid Bond) shall be forfeited and the same shall be retained by the County. No plea of mistake in the offer or misunderstanding of the conditions of forfeiture shall be available to the Respondent for the recovery of Bid security or as a defense to any action.

7. Contract Terms and Conditions

7.1. Project Owner Status During Construction

The Contractor shall provide the following information to all subcontractors and suppliers: County's Representatives The Project Owner shall be Orange County, Florida. The Board shall be represented by the Project Manager listed below during the construction period: Roan Waterbury Project Manager, Orange County Capital Projects Division, Phone: 407.836.0034 Roan.Waterbury@ocfl.net

7.2. Liquidated Damages

Should the Contractor fail to substantially complete all Work under this Contract and make the project available for beneficial use on or before the date stipulated for Substantial Completion (or such later date as may result from extension of time granted by County), he shall pay and/or the County may retain from the compensation otherwise to be paid to the Contractor, as liquidated damages, the sum of \$500.00 for each consecutive calendar day that terms of the Contract remain unfulfilled beyond date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which County will sustain per diem by failure of Contractor to complete work within time as stipulated; it being recognized by County and Contractor that the injury to County which could result from a failure of Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall costs for liquidated damages be construed as a penalty on the Contractor. For each consecutive calendar day that the work remains incomplete after the date established for Final Completion, the County will retain from the compensation otherwise to be paid to the Contractor the sum of \$500.00. This amount is the mutually agreed upon minimum measure of damages the County will sustain by failure of the Contractor to complete all remedial work, correct deficient work, clean up the project and other miscellaneous tasks as required to complete all Work specified and this amount of liquidated damages is in addition to the liquidated damages prescribed above for failure to timely achieve Substantial Completion.

7.3. Definitions

The words and expressions (or pronouns used in their stead) defined in this Article shall, wherever they appear in the Contract Documents, be construed as follows unless a different meaning is clear from the context.

"Addenda" shall mean any additional Contract provisions issued in writing by the County prior to receipt of Bid.

"Bid Proposal" shall mean the offer or proposal of the Bidder submitted on the Official Bid Form and Attachments setting forth the prices for the Work to be performed.

"Bidder" shall mean any person, firm or corporation submitting a Bid for the Work.

"Board of County Commissioners" shall mean the Board of County Commissioners, Orange County, Florida.

"Change Order" shall mean a written order to the Contractor, signed by the County, authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Amount or the Contract Time issued after execution of the Contract.

"Contract" shall mean the written agreement between the County and the Contractor covering the Work to be performed; the Contract will be attached to and made a part of the Contract Documents.

"Contractor" shall mean successful bidder (and vice versa), whether a corporation, firm, individual or any combination thereof, and its (or their) successors, personal representatives, executors, administrators and assigns.

"Contract Amount" shall mean the total monies payable to the Contractor under the Contract Documents. The term "Contract Price" where used in the Contract Documents refers to the Contract Amount.

"Contract Float" shall mean the number of days that an activity or a sequence of activities does not necessarily have to start or end on the scheduled dates to maintain the schedule, or as a minimum, the number of days that an activity may be delayed from its early start date without delaying completion of the Work beyond the Contract Time for Substantial Completion or Final Completion.

"Contract Time" will mean the number of calendar days stated in the Agreement for the completion of the Work.

"County" shall mean Orange County, Florida, or their duly authorized representative(s), for whom the Work is being performed. The County may also be referred to as the **"Owner"**.

"Day " shall mean one calendar day when used in the Contract Documents, unless otherwise specified. References to time periods counted in "days" or "calendar days" shall mean consecutive calendar days and all such references to "business days" shall mean consecutive business days.

"Defective Work" shall mean both: (a) Work that is unsatisfactory, deficient, or damaged, does not conform to the Contract Documents, or does not meet the requirements of any inspection, test, or approval; and (b) Work associated with punch list items that the Contractor fails to complete within a reasonable time after issuance of the punch list by the Project Manager.

"Drawings" shall mean only those drawings specifically referred to as such in these documents or in any Addenda. Drawings issued after the execution of the Contract to explain further, to illustrate, or to show changes in the Work will be known as "Supplementary Drawings" and shall be binding upon the Contractor with the same force as the Drawings.

"Final Completion" shall mean the stage in the progress of the Work when the County determines that the Work is 100% complete, including but not limited to all items on the Final Punch List, as evidenced by a *Certificate of Final Completion* provided by the County.

"Notice" shall mean written Notice. Notice shall be served upon the Contractor either personally or by leaving the said Notice at his residence or with his Agency in charge of the Work, or addressed to the Contractor at the residence or place of business given in the Bid and deposited in a postpaid wrapper in any post box regularly maintained by the United States Post Office.

"Notice of Award" shall mean the written notice of award of the Contract given by the County to the apparent successful Bidder.

"Notice to Proceed" shall mean the written notice given by the County to Contractor fixing the date the Contract Times will commence to run.

"Professional" shall mean the professional independent Architectural/Engineering firm designated to assist the County in the work by a prior agreement entered into by the County and the said firm. The terms "Engineer" and "Architect", where used in the Contract Documents, refer to the Professional.

"Project" shall mean the entire improvement of which this Contract forms a part.

"Project Manager" shall be the duly authorized representative of the County during the construction period.

"Record Schedule" shall mean the time table of predicted tasks, milestones, task durations, deadlines and the start and end dates of the Work indicated in a Progress Schedule accepted by the County and provided to the County prior to the first progress payment. County acceptance of a revised and/or updated Progress Schedule will result in a revised Record Schedule, if so noted in the County's written acceptance, that will be used to evaluate progress and delays occurring after the acceptance of the revised Record Schedule.

"Shop Drawings" shall mean all drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Subcontractor, a manufacturer, supplier or distributor and which illustrate the equipment, material and/or some portion of the Work.

"Site" shall mean the area upon or in which the Contractor's operations are carried on and such other areas adjacent thereto as may be designated as such by the Project Manager.

"Specifications" shall mean parts of the Contract Documents identified as "Specifications" and organized into Divisions. The specifications include general requirements and technical descriptions of materials, equipment, construction systems, standards and workmanship. The term "Technical Provisions" where used in the Contract Documents refers to the Specifications.

"Subcontractor" shall mean any person, firm or corporation other than employees of the Contractor who or which contracts with the Contractor to furnish, or actually furnishes labor, materials and/or equipment for the Work.

"Substantial Completion" shall mean the stage in the progress of the Work when the Work, or designated portions thereof, may still require minor modifications or adjustments but, in the County's opinion, the Work has progressed to the point such that all parts of the Work under consideration are fully operational, permitted, and usable for intended purposes, as evidenced by a *Certificate of Substantial Completion* issued by the County.

"Surety" shall mean any corporation that executes, as Surety, the Contractor's Bid Bond, Payment Bond and Performance Bonds securing the performance of this Contract.

"Work" shall mean any and all obligations, duties and responsibilities necessary to the successful completion of the construction assigned to or undertaken by the Contractor under the Contract Documents, including the furnishing of all labor, materials, equipment, and other incidentals.

7.4. Tax Exemption

The County has the following tax exemption certificates assigned:

1. Certificate of Registry No. 59-70-004K for tax free transactions under Chapter 32, Internal Revenue Code;
2. Florida Sales and Use Tax Exemption Certificate No. 58-12-090729-53C.

7.5. Verification of Employment Status

The Contractor is required to be registered with the U.S. Department of Homeland Security's E-Verify system prior to entering into a contract with Orange County. The Contractor shall use the E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the contract term. The Contractor shall include an express provision in all of its subcontracts requiring subcontractors, who perform work or provide services pursuant to the contract, to use the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. The Contractor shall obtain from its subcontractor(s) an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. For more information on this process, please refer to United States Citizenship and Immigration Service site at:

<http://www.uscis.gov/portal/site/uscis>.

Only those employees determined eligible to work within the United States shall be employed under this contract.

By submission of a bid in response to this solicitation, the Contractor affirms that all employees in the above categories shall undergo e-verification before placement on this contract. The Contractor shall commit to comply with this requirement by completing the E-Verification certification, attached to this solicitation.

A public employer, contractor, or subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Florida Statutes is obligated to terminate the contract with the person or entity pursuant to Section 448.095(5)(c)1, Florida Statutes. If Orange County terminates the contract for the foregoing reason, the contractor may not be awarded a public contract for at least one (1) year after the date on which the contract was terminated, and the contractor will be liable for any additional costs incurred by Orange County as a result of the termination of the contract.

7.6. Non-Discrimination

Pursuant to Section 17-288, Orange County Code, the County will not extend public funds or resources in a manner that would encourage, perpetuate, or foster discrimination. As such, any and all person(s) doing business with the County shall recognize and comply with the County's "Equal Opportunity and Nondiscrimination Policy," which is intended to assure equal opportunities to every person in securing or holding employment in a field of work or labor for which that person is qualified, regardless of race, religion, sex, color, age, disability or national origin. This policy is enforced by Section 17-314, Orange County Code, and the County's relevant Administrative Regulations. Section 17-290, Orange County

Code, memorializes the County's commitment to its Equal Opportunity and Nondiscrimination Policy by requiring the following provisions in all County contracts:

- A. The Contractor represents that the Contractor has adopted and shall maintain a policy of nondiscrimination as defined by applicable County ordinance through the term of this Contract.
- B. The Contractor agrees that, on written request, the Contractor shall permit reasonable access to all business records or employment, employment advertisement, application forms, and other pertinent data and records, by the County, for the purpose of investigating to ascertain compliance with the nondiscrimination provisions of this Contract; provided, that the Contractor shall not be required to produce for inspection records covering periods of time more than one year prior to the date of this Contract.
- C. The Contractor agrees that, if any of the obligations of this Contract are to be performed by subcontractor(s), the provisions of subsections A. and B. of this section shall be incorporated into and become a part of the subcontract.

7.7. Regulatory Authority

In the event that the County exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws, and ordinances shall be deemed to have occurred pursuant to the County's authority as a governmental body and shall not be attributable in any manner to the County as a party to this Contract.

7.8. Attorney Fees and Costs

Unless otherwise expressly stated in this Contract, the parties shall each bear their own costs, expert fees, attorneys' fees, and other fees incurred in connection with this Contract and any action or proceeding arising out of or relating to this Contract (an "Action").

7.9. Construction and Representations

Each party acknowledges that it has had the opportunity to be represented by counsel of such party's choice with respect to this Contract. In view of the foregoing, and notwithstanding any otherwise applicable principles of construction or interpretation, this Contract shall be deemed to have been drafted jointly by the parties and in the event of any ambiguity, shall not be construed or interpreted against the drafting party. Neither party has relied upon any representations or statements made by the other party to this Contract which are not specifically set forth in this Contract.

7.10. Governing Law

This Contract shall be considered as having been entered into in the State of Florida, United States of America, and shall be construed and interpreted in accordance with the laws of that state.

7.11. Headings

The headings or captions of articles, sections, or subsections used in any of the Contract Documents are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Contract.

7.12. Jury Waiver

Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right that party does or might have to a trial by jury related to any Action.

7.13. Remedies

No remedy conferred upon any party in this Contract is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any rights, power, or remedy hereunder shall preclude any other or further exercise thereof.

7.14. Severability

The provisions of this Contract are declared by the parties to be severable. However, the material provisions of this Contract are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Contract. Therefore, should any material term, provision, covenant, or condition of this Contract be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from holding.

7.15. Survivorship

Those provisions which by their nature are intended to survive the expiration, cancellation, or termination of this Contract, including, by way of example only, the indemnification and public records provisions, shall survive the expiration, cancellation, or termination of this Contract.

7.16. Use of County and Contractor Logos

Both parties are prohibited from use of any and all of the other party's emblems, logos, or identifiers without written permission from that party.

7.17. Venue

Each of the parties hereby irrevocably submits to the jurisdiction of any federal or state court of competent jurisdiction sitting in Orange County, Florida, regarding any Action, and further agrees that any such Action shall be heard and determined in such Florida federal or state court. Each party hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of any Action in Orange County, Florida.

7.18. Waiver

No delay or failure on the part of any party to this Contract to exercise any right or remedy accruing to such party upon the occurrence of an event of violation shall affect any such right or remedy, be held to

be an abandonment thereof, or preclude such party from the exercise thereof at any time during the continuance of any event of violation. No waiver of a single event of violation shall be deemed to be a waiver of any subsequent event of violation.

7.19. Tobacco Free Campus

All Orange County operations under the Board of County Commissioners shall be tobacco free. This policy shall apply to parking lots, parks, break areas, and worksites. It is also applicable to the Contractor and their personnel during contract performance on county-owned property. Tobacco is defined as tobacco products including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco, and snuff. Failure to abide by this policy may result in civil penalties levied under Chapter 386, Florida Statutes, for the violating individual, contract enforcement remedies against the Contractor, or both.

7.20. Public Records Compliance

By executing this Contract, the Contractor hereby certifies that it understands and agrees that all books, records, and accounts related to the performance of this Contract shall be subject to the applicable public records provisions of Chapter 119, Florida Statutes. As such, all books, records, and accounts created by the Contractor, or provided to the Contractor pursuant to this Contract, are public records and the Contractor agrees to assist the County in compliance with any request for such public records made in accordance with Chapter 119, Florida Statutes.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

400 E. South Street, 2nd Floor
Orlando, FL 32801
(407) 836-5897
publicrecordrequest@ocfl.net

7.21. Availability of Funds

The obligations of the County under this award are subject to the availability of funds lawfully appropriated for its purpose by the State of Florida and Orange County, Florida, or other specified funding source for this procurement.

7.22. Indemnification

1. Subject to the limitations in the third paragraph under this heading, the Contractor shall defend, indemnify and hold harmless the County, its agents and employees from and against all liabilities, claims, damages, losses, costs and expenses (including attorney's fees) arising out of or resulting from the performance of the Work, provided that any such liability, claim, damage, loss, cost or expense:

- is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and,
- is caused in whole or in part by any act or omission 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, regardless of whether or not it is caused in whole or in part by a party indemnified hereunder.

The Contractor hereby acknowledges receipt of One Hundred Dollars (\$100) and other good and valuable consideration from the County as consideration for the indemnification provisions in this Contract.

2. In any and all claims against the County, its agents or employees; employees of the Contractor and subcontractor; all persons directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under the previous paragraph shall not be limited in any way as to 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 other employee benefit acts.

3. The indemnification obligations of the Contractor under this section shall not extend to the liability of the Professional and its agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or the giving or the failure to give requested interpretations by the Professional and their agents or employees, provided such giving or failure to give is the primary cause of injury or damage.

4. The Contractor shall defend, indemnify and hold harmless the County and anyone directly or indirectly employed by it from and against all claims, damages, losses and expenses (including attorney's fees) arising out of any infringement of patent rights or copyrights held by others during or after completion of the Work, and shall defend all such claims in connection with any alleged infringement of such rights.

5. Provided however, if this Contract is deemed by a court of competent jurisdiction to be a construction contract under Section 725.06, Florida Statutes, any obligation of the Contractor to defend, indemnify or hold harmless the County, its officers and employees shall be limited to an obligation to indemnify and hold harmless to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.

The indemnification provisions contained herein shall survive the termination of this Contract.

7.23. Pricing Audit

The Contractor shall establish and maintain a reasonable accounting system, which enables ready identification of Contractor's cost of goods and use of funds.

Such accounting system shall also include adequate records and documents to justify all prices for all items invoiced as well as all charges, expenses and costs incurred in providing the goods for at least five (5) years after completion of this contract. The County or its designee shall have access to such books, records, subcontract(s), financial operations, and documents of the Contractor or its subcontractors, as required to comply with this section for the purpose of inspection or audit anytime during normal business hours at the Contractor's place of business. This right to audit shall include the Contractor's

subcontractors used to procure goods under the contract with the County. Contractor shall ensure the County has these same rights with subcontractors and suppliers.

7.24. Employees of the Contractor

All work under this contract shall be performed in a professional and skillful manner. The County may require, in writing, that the Contractor, remove from this contract any employee the County deems incompetent, careless, or otherwise objectionable.

7.25. Copies of Documents

Copies of documents, records, materials, and/or reproductions requests will be charged in accordance with Orange County's fee schedule. Copyrighted materials may be inspected, but cannot be copied or reproduced per Federal law.

7.26. Scrutinized Companies

- A. By executing this Agreement, the Contractor/Sub-Recipient certifies that it is eligible to bid on, submit a proposal for, or enter into or renew a contract with the County for goods or services pursuant to Section 287.135, Florida Statutes.
- B. Specifically, by executing this Agreement, the Contractor/Sub-Recipient certifies that it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.
- C. Additionally, if this Agreement is for an amount of one million dollars (\$1,000,000) or more, by executing this Agreement, the Contractor/Sub-Recipient certifies that it is not:
 1. On the "Scrutinized Companies with Activities in Sudan List" or the "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List," created pursuant to Section 215.473, Florida Statutes; and/or
 2. Engaged in business operations in Cuba or Syria.
- D. The County reserves the right to terminate this Agreement immediately should the Contractor be found to:
 1. Have falsified its certification of eligibility to bid on, submit a proposal for, or enter into or renew a contract with the County for goods or services pursuant to Section 287.135, Florida Statutes; and/or
 2. Have become ineligible to bid on, submit a proposal for, or enter into or renew a contract with the County for goods or services pursuant to Section 287.135, Florida Statute subsequent to entering into this Agreement with the County.
 3. If this Agreement is terminated by the County as provided in subparagraph 4(a) above, the County reserves the right to pursue any and all available legal remedies against the

Contractor, including but not limited to the remedies as described in Section 287.135, Florida Statutes.

- E. If this Agreement is terminated by the County as provided in subparagraph 4(b) above, the Contractor shall be paid only for the funding-applicable work completed as of the date of the County's termination.
- F. Unless explicitly stated in this Section, no other damages, fees, and/or costs may be assessed against the County for its termination of the Agreement pursuant to this Section.

7.27. Assignment of Contract

The Contractor may not make any assignment of the contractual agreement between the parties, in whole or in part, without prior written authorization as may be given by the County, at its sole discretion. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without written consent of the party sought to be bound; and specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

7.28. Reference Points

Availability of Lands: The County will furnish, as indicated in the Contract Documents and not later than the date when needed by the Contractor, the lands upon which the Work is to be done, rights of way for access thereto and such other lands which are designated for the use of the Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained by the County unless otherwise specified in the Contract Documents. If the Contractor believes that any delay in the County's furnishing these lands or easements entitles him to an extension of the Contract Time, they may make a claim therefore as provided herein these contract terms and conditions. The Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. The Project Manager will, upon request, furnish to the Contractor copies of all available boundary surveys and subsurface test.

Unforeseen Subsurface Conditions: The Contractor shall promptly notify the Project Manager in writing of any subsurface or latent physical conditions at the site which may differ materially from those indicated in the Contract Documents. The Project Manager will promptly investigate those conditions and advise the Contractor in writing if further surveys or subsurface tests are necessary. Promptly thereafter, if needed, the Project Manager will obtain the necessary additional surveys and tests and furnish copies to the Contractor. If the Project Manager 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 will be issued incorporating the necessary revisions, in accordance with the article titled "*Changes in the Work*" herein.

Reference Points: The Contractor shall be responsible for all field survey work coincidental with completion of this Work as specified herein. All survey work shall be done under the supervision of a

Registered Professional Surveyor and Mapper. The County will furnish, one time, a set of permanent reference markers along the line of work to form the basis for the above Contractor's survey.

All Section Corners and Quarter Section corners falling within the limits of this Work shall be perpetuated by a Florida Registered Surveyor and Mapper.

- A. All such corners falling within or on the boundaries of this project shall have reference ties made, certified to and submitted to the County Surveyor, Orange County, Florida, prior to the commencing of construction.
- B. Upon completion of construction and prior to Final Completion, certified corner records shall be submitted to the Department of Natural Resources in compliance with Florida Statutes, Chapter 177.507 and a copy of said certified corner record shall also be submitted to the Orange County Surveyor. Said corner records shall reflect the corner as perpetuated and which shall meet these minimum standards.
 1. If the corner falls in asphalt or concrete construction, the corner shall be a 2 1/4" metal disc marked according to standard government practices and set in concrete no less than 18" in depth and shall be encased in an adjustable 5 1/4" diameter or larger valve box raised to the finished surface of construction.
 2. If the corner falls at any other location, it shall be a 4" x 4" concrete monument no less than 23" long with a 2 1/4" metal disc marked according to standard government practices. The top of said monument shall be set flush with the ground (+0.5' depending on conditions).
- C. Any U.S.C. and G.S. monument within limits of construction are to be protected. If monuments are in danger of damage, the Contractor shall contact the Project Manager and the Orange County Surveyor prior to the commencing of construction.
- D. Payment for all necessary survey work shall be included in the bid as part of other items of work.

7.29. Contractor's Responsibilities

Supervision and Superintendence - The Contractor shall supervise and direct the work efficiently and with his best skill and attention. He shall be solely responsible for the means, methods, techniques, sequences and procedure of construction, unless otherwise specified. The Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents. The Contractor shall keep on the site at all times during its progress a competent, resident superintendent who shall not be replaced without written notice to the Project Manager. 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.

The Project Manager may require in writing that the Contractor remove from the Work any of Contractor's personnel that the Project Manager determines to be incompetent, careless or otherwise objectionable.

No claims for an increase in Contract Amount or Contract Time based on the Project Manager's use of this provision will be valid. The Contractor shall indemnify and hold the County harmless from and against any claim by Contractor's personnel on account of the use of this provision.

Labor, Materials and Equipment - The Contractor shall provide competent, suitable, qualified personnel to lay out the Work and perform construction as required by the Contract Documents. He shall at all times maintain good discipline and order at the site. The Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.

All materials and equipment shall be new except as otherwise provided in the Contract Documents. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment furnished.

All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors except as otherwise provided in the Contract Documents.

Substitute Material or Equipment - If it is indicated in the Specifications that the Contractor may furnish or use a substitute that is equal to any material or equipment specified, and if the Contractor wishes to furnish or use a proposed substitute, he shall within thirty (30) days after the award of the Contract make written application to the Project Manager for acceptance of such a substitute, certifying in writing that the proposed substitute shall perform adequately the duties imposed by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing in an efficient and economic manner as that specified. The application shall include sufficient information to allow the Project Manager to evaluate the substitutions.

The application shall state the extent, if any, to which the review, acceptance, furnishing and installation of the proposed substitute will prejudice Contractor's completion of the Work within the Contract Time(s). If the cost of the review of the substitution is greater than that of the originally specified item, the Contractor will reimburse the County for all costs. The County may require the Contractor to furnish at Contractor's expense a special performance guarantee or other Surety with respect to any substitute. The benefit of lower cost items shall be shared between the County and Contractor as specified in the Instructions to Bidders. No substitute shall be ordered or installed without the written acceptance of the Project Manager who shall be the sole judge of acceptability.

Concerning Subcontractors- The Contractor shall not employ any Subcontractor, other person or organization of the types referred to in Article 4 (whether initially or as a substitute) against whom the County or the Project Manager may have reasonable objections, nor will the Contractor be required to employ any Subcontractor against whom he has reasonable objection.

The Contractor shall not make any substitution for any Subcontractor who has been accepted by the Project Manager, unless the County and the Project Manager determine that there is good cause for doing so.

The Contractor shall 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 they are employed by him. Nothing contained in the Contract Documents shall create, nor be interpreted to create, privity or any other contractual relationship whatsoever between the County and any Subcontractor or any person except the Contractor, or any obligation on the part of the County to pay or to see to the payment of any monies due any Subcontractor, except as may otherwise be required by law. The County may furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to the Contractor on account of specific Work done. 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 specific trade.

The Contractor agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the County.

All Work performed for the Contractor by Subcontractors shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by insurance held by the County as trustee. The Contractor shall pay each Subcontractor a share of any insurance monies received by the Contractor under this insurance.

Patent Fees And Royalties- The Contractor shall pay all license fees and royalties and assume all costs incident to the use of any invention, design, process or device which is the subject of patent rights or copyrights held by others.

Utilities - The Contractor shall pay all public utility charges except as provided for in the Contract Documents.

Laws and Regulations - The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the work. If the Contractor observes that the Specifications or Drawings are at variance therewith, he will give the Project Manager prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Change Order. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the Project Manager, he shall bear all costs arising therefrom; however, it shall not be his primary responsibility to make certain that the Drawings and Specifications are in accordance with such laws, ordinances, rules and regulations.

Use Of Premises - The Contractor shall confine his equipment, the storage of materials and equipment, and the operations of his workers to the areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with materials or equipment.

The Contractor shall confine the operation of workmen and equipment, and the storage of materials and equipment to the County's property or to other non County property or in public right of way areas indicated on the Contract Drawings as including work to be done pursuant to the Contract documents. In the event the Contractor desires to have access to the project site, or perform work or operations pertaining to the Contract on, over or from non County property adjacent to the project site, the Contractor shall obtain written authorization to do so from the respective adjacent property owner(s) prior to using such property. Such written authorization shall include a provision whereby the property owner agrees to hold the County harmless, and to defend the County, in the event of any liability, loss,

injury, or claim incurred as a result of the Contractors work or operations involving the use of the adjacent non-County property.

The County shall be provided with a notarized, certified copy of such written authorization(s) before the Contractor commences work or operations or use of such property in connection with work or operations pursuant to this Contract.

Record Drawings - The Contractor shall keep one record copy of all Specifications, Drawings, Addenda, Change Orders and Shop Drawings at the site in good order, and annotated and/or marked on a current basis to indicate the progress of the work done and to show all changes made during the construction process or conditions varying from the Bid Documents. These shall be available to the Project Manager for inspection throughout construction and shall be delivered to the Project Manager upon completion of the Work, but prior to final payment.

Safety And Protection - The Contractor shall initiate, maintain and supervise all safety precautions and programs in connection with the Work. He shall take all necessary precautions for the safety of and will provide the necessary protection to prevent damage, injury or loss to:

- A. All employees on the Project and other persons who may be affected thereby:
- B. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body or public or private utility service organization having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by the conditions and the progress of the Work, all necessary safeguards for safety and protection and, in addition, he shall comply with all applicable recommendations of the Manual of Accident Prevention in Construction of the Associated General Contractors of America, Inc., and the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) and subsequent revisions and addenda as published by the U.S. Department of Transportation, Federal Highway Administration and adopted by the Florida Department of Transportation. He shall notify owners of adjacent utilities when prosecution of the Work may affect them.

All damage, injury or loss to any property or all damage, disruption, discontinuance or other loss to any utility system or roadways referred to in Paragraph B. and C. caused directly or indirectly, in whole or in part by the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, will be remedied by the Contractor, except damage or loss attributable to the fault of the Drawings or the Specifications or to the acts or omissions of the County, and not attributable, directly or indirectly, in whole or in part, to the fault of negligence of the Contractor. The Contractor shall also comply with the guidelines set forth in the Orange County Safety & Health Manual. The manual can be accessed online at the address below:

<http://www.orangecountyfl.net/VendorServices/OrangeCountySafetyandHealthManual.aspx>

The Contractor shall designate a responsible member of his organization whose duty shall be the prevention of accidents at the site. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Project Manager.

Emergencies - In emergencies affecting the safety of persons, the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Project Manager, is obligated to act at his discretion to prevent threatened damage, injury or loss. He shall give the Project Manager prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved. If the Contractor believes that additional Work done by him in an emergency which arose from causes beyond his control entitles him to an increase in the Contract Amount or an extension of the Contract Time, he may make a claim therefore as provided herein these contract terms and conditions.

Cleaning Up - The Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work; at the completion of the Work he shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the County.

The Contractor shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. If at any time during construction of this project, the Contractor fails to clean up on a daily basis, the County may do so. All costs associated with the County's cleanup activities on behalf of the Contractor shall be deducted from amounts due to the Contractor.

7.30. Work by Others and Utility Coordination

Work by Others – The County may perform additional work related to the project by itself, or it may let other direct contracts which shall contain terms and 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 itself), 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. Should the contract entail relocation of facilities not a part of this Contract, the Contractor will coordinate and cooperate with the applicable entity responsible for this portion of the work.

If any part of the Contractor's Work depends (for proper execution of results) upon work of any such other Contractor (or the County), the Contractor shall inspect and promptly report to the Project Manager in writing any defects, deficiencies or delays in such work that render it unsuitable for such proper execution and results.

The Contractor's failure to report shall constitute an acceptance of the other work, except as to defects, deficiencies and delays which may appear in the other work after the execution of the work.

The Contractor shall 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 shall not endanger any work of others by cutting, excavating or otherwise altering such other

work and shall only cut or alter such other work with the written consent of the Project Manager.

If the performance of additional work by other Contractors or the County is not noted in the contract documents prior to the execution of the Contract, written notice thereof shall be given to the Contractor prior to starting any such additional 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 herein these contract terms and conditions.

Utility Coordination – Section 337.401 (1), Florida Statutes and other applicable law allows utility owners to install and maintain along, above, under, across or on any road or right-of-way any electric transmission or distribution facilities, telephone, telegraph, pole lines, poles, railway structures, ditches, sewers, water, heat, gas mains, pipelines, fences, gasoline tanks and pumps, waterlines, gas lines, wire lines, utility service connections, water and gas meter boxes, valve boxes, light standards, cable lines, cable ways, signals, signal boxes, and all other utility installations, improvements and utility appurtenances to be installed and maintained in the right-of-way.

The Contractor understands and agrees that the lands upon which the Work is to be performed consists of prior existing right-of-way, as well as, recently acquired right-of-way. The Contractor acknowledges and agrees that utility installations and appurtenances are located within the limits of the planned construction Work. The utility installations and appurtenances may be in conflict with the Contractor's Work or require relocation or adjustments. All utility conflict resolutions, relocations, or adjustments are to be moved by the utility owners at their expense, unless otherwise provided in the Contract documents.

The Contractor, by submission of a bid, agrees that prior to bid he has studied, performed field inspections, and evaluated all potential utility conflicts, the locations of permanent and temporary utility appurtenances in their present and relocated positions as may be shown on the plans. The Contractor acknowledges and agrees that the Contractor's bid has considered all potential utility conflicts, the locations of permanent and temporary utility appurtenances in their present and relocated positions including those shown on the plans, not shown on the plans, and those identified during the Contractor's pre-bid study or that should have been identified during the Contractor's field inspections, and evaluation of the limits of the planned construction Work.

The design Professional may show surface or subsurface utility conflicts, relocations, or adjustments in the drawings and plans. The surface and subsurface utility information shown in the drawings and plans was obtained and used by the design Professional to establish design criteria for the design plans. The accuracy as to location and the identification of all surface or subsurface utility information is not warranted or guaranteed and is not to be construed as part of the construction plans governing the construction Work. The Contractor shall solely make his own determinations as to surface and subsurface conditions.

The Contractor shall be solely responsible for utility coordination including all utility conflict resolutions, relocations, and adjustments. The concept of "utility coordination" means that the Contractor shall, at a

minimum:

- A. Investigate both subsurface and aboveground conditions to identify potential conflicts far enough in advance of his planned construction operations to allow the Contractor to coordinate with utility owners and responsible parties any necessary conflict resolutions, relocations, or adjustments such that they can occur without delay to the Contractor's operations and Progress Schedule.
- B. Conduct regularly scheduled Utility Coordination Meetings with all affected utilities, and shall maintain detailed minutes of the discussions.
- C. Contact all utility owners in advance of any needed conflict resolutions, relocations, or adjustments.
- D. Contact the Project Manager as to all Contractor scheduled utility conflict resolutions, relocations, or adjustments.
- E. Schedule all work to be performed by the utility owners related to utility conflict resolutions, relocations, or adjustments.
- F. Schedule all work to be performed by the utility owners so as not to delay or disrupt in any way the Contractor's own performance of the Contractor's Performance Schedule.
- G. Assure the proper connection of the Contractor's Work with the work of the utility owners.
- H. Assure that the schedule, contacts, and proper connections between the Contractor's Work and the utility owner's work harmonize the work of both in a common action to achieve resolution of utility conflicts, relocations, and adjustments.
- I. Contractor shall, at no cost to the County, adjust the project schedule to allow the work to proceed in such a manner that delays to the progress of the work are minimized.

Delays to the Contractor's Progress Schedule resulting from the resolution of utility conflicts, relocations, and adjustments to utilities will not be considered as the basis for granting a change in Contract Amount or Contract Time.

7.31. Shop Drawing and Samples

After checking and verifying all field measurements, the Contractor shall submit to the Project Manager for review, in accordance with the accepted schedule of Shop Drawing submission, five copies (or at the Project Manager's option, one reproducible copy) of all Shop Drawings, which shall have been checked by and stamped with the approval of the Contractor and identified as the Project Manager may require. The data shown on the Shop Drawings shall be complete with respect to dimensions, design criteria, materials of construction and the like to enable the project manager to review the information as required.

The Contractor shall also submit to the Project Manager for review with such promptness as to cause no delay in the Work, all samples required by the Contract Documents. All samples shall be checked by and

stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent numbers and the use for which intended.

At the time of each submission, the Contractor shall in writing call to the Project Manager's attention to any deviations that the Shop Drawing or sample may have from the requirements of the Contract documents.

The Project Manager will review with reasonable promptness and take appropriate action with regard to Shop Drawings and samples, but its review shall be only for general conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The acceptance of a separate item as such shall not indicate approval of the assembly in which the item functions.

The Contractor shall make any corrections required by the Project Manager and return the required number of corrected copies of Shop Drawings and re-submit new samples until accepted.

The Contractor's stamp of approval on any Shop Drawing or sample shall constitute a representation to the Project Manager that the Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers and similar data or he assumes full responsibility for doing so, and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and Contract Documents.

No Work requiring a Shop Drawing or sample submission shall be commenced until the submission has been accepted by the Project Manager. A copy of each accepted Shop Drawing and each accepted sample shall be kept in good order by the Contractor at the site and shall be available to the Project Manager.

The Project Manager's acceptance of Shop Drawings or samples shall not relieve the Contractor from his responsibility for any deviations from the requirements of the Contract Documents, unless the Contractor has in writing called the Project Manager's attention to such deviation at the time of submission and the County and the Project Manager have given written acceptance to the specific deviation; nor shall any acceptance by the Project Manager relieve the Contractor from responsibility for errors or omissions in the Shop Drawing.

Each Shop Drawing or sample submittal or substitution request by the Contractor shall contain a reference identifying the applicable, specific Section of the Specifications to which it pertains. Submittals failing to comply with this provision shall be rejected and returned to the Contractor without review.

Each Shop Drawing or sample submittal or substitution request shall include the following stamped certification by the Contractor:

"The General Contractor has reviewed the Shop Drawing, sample or substitution submitted herewith and has determined and hereby certifies that in all respects this submittal is in full compliance and conformance with the Contract specifications, drawings and all other Contract requirements pertaining thereto".

Failure of the Contractor to include the above stated specification reference number or certification of compliance shall result in the rejection of the submittal. The Contractor shall also submit within five (5) days of Contract Award to the Project Manager for acceptance all samples required by the Contract

Documents. All samples shall have been checked by and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent numbers and the use for which intended.

In the event that the Contractor, or anyone working for or on behalf of the Contractor on this project, should commence or do any work requiring submission of a Shop Drawing or sample, or involving a substitution or an "or equal" request without having such submittal accepted by the County in writing, then the Contractor is advised that any and all such work will be done at its risk and is subject to rejection and/or removal at the Contractor's expense and at no additional cost to the County if applicable Shop Drawing, sample, substitution, "or equal" or other submittal is not accepted.

Further, the Contractor shall not receive "progress" or "final" payment for any and all work commenced or done which requires, but has not received acceptance of Shop Drawings, samples, substitution requests, or "or equal" requests or any other required submittal, nor will the Contractor receive "progress" or "final" payment for any and all work that has been determined by the Professional or the County's Project Manager not to be in compliance or conformance with the established Contract requirements, Contract change orders, written directives, written clarifications provided to the Contractor, or accepted Shop Drawings, accepted samples, accepted substitutions, or accepted "or equals".

7.32. Delays and Extension of Time

County Obligation– The County owes no duty, obligation, damages, change in Contract Amount, or liability to Contractor as a result of any delay, interference, suspension or other event which may impact Contractor's progress schedule of its contract.

Extension of Time Sole Remedy – Should Contractor's performance, in whole or in part, be interfered with, delayed, re-sequenced, disrupted, or be suspended in the commencement, prosecution or completion, for reasons beyond Contractor's control, and without any fault or negligence on its part contributing thereto, Contractor's sole remedy shall be an extension of Contract Time in which to complete the Contract.

Contract Time Extension – The County may grant an extension of Contract Time when a controlling item of work on the critical path of Contractor's progress schedule is delayed by factors not reasonably anticipated or foreseeable at the time of bid. Such time extension may be allowed only for delays occurring during the time for performance set forth in the progress schedule. Extensions of Contract Time will not be granted for delays due, in whole or in part, to the fault or negligence of Contractor or any entity or person for whom Contractor is responsible.

Utility Conflicts, Relocation, and Adjustment Delays – The Contractor is solely responsible for the coordination and resolution of all utility conflicts, relocations, and adjustments. Delays resulting from the resolution of utility conflicts, relocations, and adjustments to utilities will not be considered as the basis for granting a change in Contract Amount or Contract Time.

Limitation on Damages – In the event the provision regarding an extension of time as being the sole remedy, see above, is not legally enforceable and Contractor is not limited to the sole remedy of an extension of time, the Contractor shall not under any circumstances be allowed to recover any of the following items of damage against the County: (1) profit; (2) loss of profit; (3) work inefficiencies; (4) loss of productivity; (5) overtime premiums; (6) escalation; (7) home office overhead, including but not

limited to costs of any kind for home office personnel; (8) indirect damages; and (9) consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency.

7.33. Changes in the Work

Without invalidating the Contract, the County may, at any time or from time to time, order additions, deletions or revisions in the Work authorized by written Change Orders or directive. Upon receipt of a Change Order, the Contractor shall proceed with the work involved. All such work shall be executed under the applicable conditions of the Contract documents. If any Change Order causes an increase or decrease in the Contract Amount or any extension or shortening of the Contract Time, an equitable adjustment will be made as provided in the article titled "*Change of Contract Amount and Contract Time*" herein.

Additional Work performed by the Contractor without authorization of a Change Order will not entitle him to an increase in the Contract Amount or any extension of the Contract Time, except in the case of an emergency as provided in the article titled "*Contractor's Responsibilities*" herein.

The Contractor shall notify his Surety of any changes affecting the general scope of the Work or change of the Contract Amount and the amount of the applicable bonds shall be adjusted accordingly, and an amended bond document furnished to the County.

In the event the County directs the Contractor to make a change in the Work, and if the County and the Contractor do not arrive at a mutually acceptable increase or decrease in the Contract Amount, the Contractor shall not use any such lack of mutual acceptance as a basis or cause to stop or otherwise delay the progress or the execution and completion of any of the work ordered, directed or required pursuant to the Contract Documents.

If the Contractor believes an event or situation has occurred which justifies a change in the Contract Amount or Contract Time, he shall deliver a written notice to the Project Manager. Each such written notice shall be delivered promptly, and in any event no later than 15 days after the Contractor first discovered the occurrence. The Contractor shall be deemed to have waived the right to collect any and all costs incurred more than 15 days prior to the date of delivery of the written notice, and shall be deemed to have waived the right to seek an extension of the Contract Time with respect to any delay in the Progress Schedule which accrued more than 15 days prior to the date of delivery of the written notice.

Any such notice shall include sufficient detail to explain the basis of entitlement to a claim for an adjustment to the Contract Amount or Contract Time. When requested by the Project Manager, the Contractor shall furnish any additional information and details as may be required to determine the facts or allegations involved, which shall be provided within fifteen (15) days of the request unless a longer time period is allowed by the Project Manager.

The Contractor shall prepare proposals detailing proposed adjustments to Contract Amount and/or Contract Time in accordance with the article titled "*Change of Contract Amount and Contract Time*" herein and submit them to the Project Manager within 15 days of the County's issuance of a proposed Change Order or the Contractor's submitting a written notice of a change or claim for an adjustment to the Contract Amount or Contract Time. The Contractor's proposals shall be irrevocable for a period of at

least sixty (60) days after receipt by the County. Any delay in the submittal of a complete, adequate and acceptable proposal will not justify an increase in Contract Amount or Contract Time. The Contractor agrees that it shall give the County access to any and all of Contractor's and Subcontractors' books, records and other materials relating to proposed Change Orders and other claims for adjustment to Contract Amount or Contract Time.

7.34. Warranty and Guarantee, Acceptance of Defective Work

Warranty and Guarantee - The Contractor warrants and guarantees to the County that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality, free from faults or defects and in accordance with the requirements of the Contract Documents including any required inspections, tests or approvals. All unsatisfactory Work, all faulty Work, and all Work not conforming to the requirements of the Contract Documents or 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, corrected or accepted as provided in this Article.

All warranty and guarantee coverage periods shall commence from the Final Completion date of the project as determined by the Project Manager. The coverage commencement date of warranties and guarantees shall, in accordance with the provisions stated above, be entered on each warranty or guarantee document.

However, in the event the coverage commencement date entered on the warranty or guarantee document is not in accordance with the provisions stated above, the coverage commencement date shall nonetheless be the date determined by applying the provisions stated above.

Tests and Inspections - If the Contract Documents, laws, ordinances, rules, regulations or order of any public authority having jurisdiction require any Work to specifically be inspected, tested or approved by someone other than the Contractor, the Contractor shall give the Project Manager timely notice of readiness therefore. The Contractor shall furnish the Project Manager with the required certificates of inspection, testing or approval. All such tests shall be in accordance with the methods prescribed by the American Society for Testing Materials or such other applicable organizations as may be required by law or the Contract Documents.

If any such Work required to be inspected, tested or approved is covered without written approval of the Project Manager, it must, if requested by the Project Manager, 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. Neither observations by the Contractor 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.

Access To The Work- The Project Manager and his representative and other representatives of the County and the Professional shall at all times have access to the Work. The Contractor shall provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

Uncovering Work - If any Work is covered contrary to the request of the Project Manager it must, if requested by the Project Manager be uncovered for observation and replaced at the Contractor's expense. If any Work has been covered which the Project Manager has not specifically requested to

observe prior to its being covered, or if the Project Manager considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Project Manager's request, will uncover, expose or otherwise make available for observation, inspection or testing as the Project Manager may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the Contractor will bear all the expense of such uncovering, exposure, observation, inspection and testing, and of satisfactory reconstruction. If, however, such Work is not found to be defective, the Contractor shall be allowed an increase in the Contract amount or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and re construction, if he makes a claim therefore as provided in the article titled "*Change in Contract Amount and Contract Time*" herein.

Notice to Cure - If the County determines the Work is defective or deficient; if the Contractor fails to supply sufficient skilled workers or suitable materials or equipment; if the Contractor fails to make prompt payments to Subcontractors for labor, materials or equipment; if the work is not progressing in a safe, orderly or well coordinated manner; or if the general progress and/or quality of the work is not adequate to ensure continuation or completion of the work in accordance with the Contract completion time requirements, then the Procurement Division Manager may issue a notice to cure, giving the Contractor a specific period of time (1) in which to submit to the Project Manager a written Plan of Action including a schedule setting forth a plan by which the deficiencies shall be corrected, and (2) a specific period of time in which to correct the deficiencies.

If the Contractor does not submit a Plan of Action to indicate how and when the deficiencies indicated in the notice to cure will be cured within the specified time frame that is acceptable to the Project Manager, and if those deficiencies are not corrected within that time frame, then the County will take further action, up to and including Contract termination. The Contractor shall not be entitled to any delay claims as a result of the County's issuance of the notice to cure.

Correction or Removal of Defective Work - If required by the Project Manager prior to approval of final payment, the Contractor shall, promptly, without cost to the County and as specified by the Project Manager, either correct any defective Work whether or not fabricated, installed or completed or, if the Work has been rejected by the Project Manager, remove it from the Site and replace it with non-defective Work.

If the Contractor does not correct such defective Work or remove and replace such rejected work within a reasonable time, or as specified in a written notice from the Project Manager, the County may have the deficiency corrected or the rejected work removed and replaced. All direct and indirect costs of such correction or removal and replacement shall be paid by the Contractor. The Contractor shall also bear the expense of making good all work of others destroyed or damaged by this correction, removal or replacement of his defective Work.

One (1) Year Correction Period- The Contractor shall ensure timely correction of any deficiencies in the work for a period of one (1) year after final acceptance or such longer period of time as may be prescribed by law or by any other terms required by the Contract. The Contractor shall promptly without cost to the County and in accordance with the Project Manager's written instructions either correct such defective Work or, if it has been rejected by the Project Manager, remove it from the site and replace it with non-defective Work. If the Contractor does not promptly comply with the terms of such

instructions, the Project Manager may have the defective Work corrected or the rejected Work removed and replaced. All direct and indirect costs of such removal and replacement will be paid by the Contractor.

Acceptance Of Defective Work- If, instead of requiring correction or removal and replacement of defective Work, the Project Manager prefers to accept it, then he may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents including an appropriate reduction in the Contract amount. If the acceptance occurs after approval of final payment, the appropriate amount shall be paid by the Contractor to the County.

Neglected Work By Contractor - If the Contractor should neglect to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the County may, after reasonable written notice to the Contractor and without prejudice to any other remedy it may have, make good such deficiency and the cost thereof shall be charged against the Contractor. A Change Order will be issued incorporating the necessary revision in the Contract Documents including an appropriate reduction in the Contract Amount.

If the payments then or therefore due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the County.

Notice is hereby given that the County will retain and pay for an independent materials testing laboratory to perform certain tests as follows:

- a. Initial concrete test cylinder making and testing (concrete mix design will be by Contractor).
- b. Initial earthwork compaction.
- c. Initial in-place testing of sub-grade, sub-base and base for roadways including thickness and compaction (soil cement design will be by Contractor). The County reserves the right to perform any other tests it deems necessary to ensure that any all construction is adequate for the purposes intended and meets all applicable criteria.
- d. Subsequent tests required after the initial tests to verify compliance with the Contract Documents in areas failing the initial tests shall be paid for by the Contractor by back charge to subsequent applications for payment.

The Contractor shall perform and pay for all material testing and other testing specified in the Contract Documents and as stated in paragraphs a. through e. above. The purpose of performing these tests is to verify compliance with the specifications as set forth in the Contract Documents.

7.35. Verbal Orders

The Project Manager under the following conditions may issue verbal change orders to the contract:

- A. To address bona fide emergency requirements. Emergency requirements are described as those requiring immediate action due to (1) an imminent or existing threat to the health, safety or welfare of persons or property and (2) conditions which poses serious economic damage to the County.
- B. To ensure the continuity of critical elements of contract performance.

Any such verbal direction shall be confirmed in writing by the Project Manager to the contractor within five (5) calendar days after issuance. Concurrently, a copy of the written direction shall be provided to the Manager, Procurement Division with documentation in the form of an emergency justification to support the action taken.

A formal change order and associated contract amendment, if applicable, will be negotiated in conjunction with the Procurement Division and shall succeed the written confirmation not later than thirty (30) calendar days after issuance of the verbal direction.

Board approval, as applicable, shall be obtained.

7.36. Suspension of Work and Termination

County May Suspend Work - The County may at any time and without cause suspend the Work or any portion thereof by notice in writing to the Contractor. The Project Manager will fix the date on which Work shall be resumed and the Contractor shall resume the Work on the date so fixed.

For unreasonable delays, the Contractor will be allowed an increase in the Contract Amount, an extension of the Contract Time or both, if directly attributable to any suspension and if he makes a claim therefore as provided herein these contract terms and conditions. However, no profits will be allowed on claims for suspended work. Also, during any period of suspension, the Contractor shall take all available measures to mitigate costs such as taking on new work, reassigning resources to other Contracts, etc.

County May Terminate for Cause - If the Contractor is adjudged bankrupt or insolvent; if he makes a general assignment for the benefit of his creditors without County approval; if a trustee or receiver is appointed for the Contractor or for any of his property; if he files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if he fails to prosecute and complete the Work in accordance with the established Project schedule or within the Contract Time allowed; if he repeatedly fails to supply sufficient skilled workers or suitable materials or equipment; if he repeatedly fails to make prompt payment to Subcontractors for labor, materials or equipment; if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction; if he disregards the authority of the Project Manager; or if he otherwise substantially 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 if applicable seven (7) days written notice, terminate the services of the Contractor and take possession of the Work and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and assign the completion of the Work to the Surety, or finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

If the unpaid balance of the Contract Amount exceeds the direct and indirect cost of completing the Work, including compensation for additional professional services, such excess shall be paid to the Contractor. If such cost exceeds the unpaid balance, the Contractor shall pay the difference to the County within fifteen (15) days after notification.

If the Contractor fails to provide such payment to the County, the County at its sole discretion may deduct the balance owed from payments due the Contractor on any other contracts between the

Contractor and the County. Such cost incurred by the County will be determined by the County and incorporated in a Change Order.

If the County elects to assign the completion of the Work to the Surety, and the Surety tenders a replacement contractor, then Surety shall provide performance, payment and other surety bonds as may be required in accordance with the Contract Documents.

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.

Upon Termination for Cause, the Contractor shall not be entitled to payment for any anticipated supplemental costs, administrative expenses and/or profit for uncompleted Work.

If the Contractor's failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor the contract shall not be terminated for default. Examples of such causes include (1) acts of God or the public enemy, (2) acts of a government in its sovereign capacity, (3) fires, (4) floods, (5) epidemics, (6) strikes and (7) unusually severe weather.

If after notice of termination of the services of the Contractor for cause, it is determined that the Contractor was not in default, the termination shall be deemed to have been for the convenience of the County. In such event the Contractor may recover from the County payment for Work completed and reasonable termination costs as provided in the following paragraph.

Termination for Convenience: Upon seven (7) days written notice to the Contractor and the Surety, or sooner if reasonable under the circumstances, the County may, without cause and without prejudice to any other right or remedy, elect to terminate any part of the Work, or the Contract in whole or in part, as the County may deem appropriate.

In any termination for convenience, the Contractor will be paid for Work completed by the Contractor, Subcontractors and Suppliers at the time of termination provided the Work has been inspected and accepted by the County. However, the payment to the Contractor will exclude any and all anticipated supplemental costs, administrative expenses and profit for uncompleted Work. Upon termination for convenience, the County shall have full power and authority to take possession of the Work, assume any sub-agreements with Subcontractors and suppliers that the County selects, and prosecute the Work to completion by Contract or as the County may deem expedient. A termination for convenience may apply to individual delivery orders, purchase orders or to the contract in its entirety.

Authority to Terminate:The authority to terminate this Contract including all notices thereto is the sole responsibility of the Manager, Procurement Division.

7.37. Maintenance and Examination of Records

The Contractor shall keep adequate records and supporting documents applicable to this Contract. Said records and documentation shall be retained by the Contractor for a minimum of five (5) years after the date of final payment on this contract.

If any litigation, claim or audit is commenced prior to the expiration of the five (5) year period, the

records shall be maintained until all litigation, claims or audit findings involving the records have been resolved.

If applicable, time records and cost data shall be maintained in accordance with generally accepted accounting principles. This includes full disclosure of all transactions associated with the contract.

Contractor's "records and supporting documents" as referred to in this Contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, invoices, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the County's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract document.

Such records and documents shall include (hard copy, as well as computer readable data; written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating worksheets; correspondence; change order files (including pricing data used to price change proposals and documentation covering negotiated settlements); back-charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the County in connection with the Contractor's dealings with the County (all foregoing hereinafter referred to as "records and supporting documents") to the extent necessary to adequately permit evaluation and verification of:

- a) Contractor compliance with contract requirements; or
- b) Compliance with provisions for pricing change orders; or
- c) Compliance with provisions for pricing invoices; or
- d) Compliance with provisions regarding pricing of claims submitted by the Contractor or his payees; or
- e) Compliance with the County's business ethics; or
- f) Compliance with applicable state statutes and County Ordinances and regulations.

Records and documents subject to audit shall also include those records and documents necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Contract. In those situations where Contractor's records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), the Contractor shall provide the County's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer exchange formats.

The County and its authorized agents shall have the right to audit, inspect and copy records and documentation as often as the County deems necessary throughout the term of this contract and for a period of five (5) years after final payment. Such activity shall be conducted during normal business hours.

The County, or any of its duly authorized representatives, shall have access within forty-eight (48) hours to such books, records, documents, and other evidence for inspection, audit and copying.

The County, during the period of time defined by the preceding paragraph, shall have the right to obtain a copy of and otherwise inspect any audit made at the direction of the Contractor as concerns the aforesaid records and documentation.

Records and documents shall be made accessible at the Contractor's local place of business. If the records are unavailable locally, the Contractor shall insure that all required records are provided at the Contractor's expense including payment of travel and maintenance costs incurred by the County's authorized representatives or designees in accessing records maintained out of the county. The direct costs of copying records, excluding any overhead cost, shall be at the County's expense.

The Contractor shall require all payees (examples of payees include subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between contractor and payee.

Such requirements include a flow-down right of audit provisions in contracts with payees, which shall also apply to Subcontractors and Sub-subcontractors, material suppliers, etc. The Contractor shall cooperate fully and shall cause all aforementioned parties and all of Contractor's subcontractors (including those entering into lump sum subcontracts and lump sum major material purchase orders) to cooperate fully in furnishing or in making available to the County from time to time whenever requested in an expeditious manner any and all such records, documents, information, materials and data.

The County's authorized representatives or designees shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract and shall have adequate and appropriate work space, in order to conduct audits in compliance with this article.

Even after a change order proposal has been approved, Contractor agrees that if the County later determines the cost and pricing data submitted was inaccurate, incomplete, not current or not in compliance with the terms of the contract regarding pricing of change orders, then an appropriate contract price reduction will be made. Such post-approval contract price adjustment will apply to all levels of contractors and/or subcontractors and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders.

If an audit inspection or examination by the County, or its designee, in accordance with this article discloses overpricing or overcharges (of any nature) by the Contractor to the County in excess of one-half of one percent (.5%) of the total contract billings, the reasonable actual cost of the County's audit shall be reimbursed to the County by the Contractor. Any adjustments and /or payments that must be made as a result of any such audit or inspection of the contractor's invoices and /or records and supporting documents shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the County's findings to the Contractor.

7.38. Federal Requirements

In the event this Contract is paid in whole or in part from any federal governmental agency or source, the specific terms, regulations and requirements governing the disbursement of these funds shall be specified herein and become a part of this clause. All Contracts in excess of one hundred and fifty thousand dollars (\$150,000.00) shall comply with all the requirements of Section 114 of the Clean Air Act (42 USC 7401 et seq.) as amended and Section 308 of the Federal Water Pollution Control Act (33 USC 1251 et seq.) as amended.

7.39. Condition of Materials and Packaging

In instances where the Specifications, make this subject applicable (and unless otherwise indicated), all goods and items offered for sale and/or shipped by the Contractor pursuant to the requirements imposed upon said Contractor by this Contract shall be new and in first class condition: all related containers being new and suitable for storage and shipment; all prices including the cost of standard commercial packaging. The Contractor shall be solely responsible for making any and all claims against carriers as concerns missing or damaged items.

7.40. Asbestos Free Materials

Project shall be constructed with asbestos free materials. A written, notarized statement on company letterhead is to be submitted with the final payment request. Final payment shall be withheld until such statement is submitted.

The Contractor shall agree that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the Contractor or any of its Subcontractors or agents and were not specified in the design or required by the Contract document, the Contractor shall be liable for all costs related to the abatement of such asbestos and damages or claims against the County.

7.41. Miscellaneous

- A. 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, to a member of the firm or to an officer 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 the County.
- B. All Specifications, Drawings and copies thereof furnished by the County shall remain its property. They shall not be used on another Project and, with the exception of those sets which have been signed in connection with the execution of the Contract, shall be returned to the County upon completion of the Work.
- C. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon the Contractor and the rights and remedies available to the County 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.

- D. 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, agents or others for whose acts he is legally liable, claim should be made in writing to the other party within a reasonable time of the first observance of such injury or damage.
- E. This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the provisions of this Contract will be held in Orange County, Florida. Venue for any litigation involving this Contract shall be the Ninth Circuit Court in and for Orange County, Florida.
- F. The obligations of Orange County under this award are subject to the availability of funds lawfully appropriated for its purpose by the State of Florida and the Board of County Commissioners, or other specified funding source for this contract.
- G. The County will be represented on site by one or more Inspectors who are employed by the County or by a Construction Engineering and Inspection (CEI) firm under contract to the County. The Contractor is to follow all directions provided by these Inspectors. Provided, however, that any such directions shall not be construed to:
 - 1. Authorize any deviation from the Contract Documents that:
 - a. Requires a change in the Contract Price or Contract Time;
 - b. Materially changes any aspect of the work covered by a permit to the extent that the regulatory agency having jurisdiction would require modification of the permit;
 - c. Materially changes any aspect of the work to the extent that the intent of the design is compromised;
 - 2. Approve any substitute materials or equipment;
 - 3. Undertake any of the responsibilities of Contractor, subcontractors or Contractor's superintendent, or expedite the Work; Direct the Contractor as to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents;
 - 4. Advise on or issue directions as to safety precautions and programs in connection with the Work.
- H. When adequately justified with documentation deemed acceptable by the County, the County reserves the right without assuming any obligation to permit price adjustments for unexpected increase of material costs to be made to this Contract due to fluctuations in market prices. The unexpected increase of material costs must be unanticipated, beyond the reasonable control of the Contractor, and impacting the Contractor's industry/market segments.

Only during the pre-construction phase, prior to the purchase of materials or any onsite work

performed, the Contractor must request such price adjustments in writing and set forth the unexpected increase of material costs that are adversely impacting the Contractor's specific contract. The unexpected increase of material costs must not be part of any other price adjustment or change order allowed or provided for by the contract.

The County will have sole discretion to approve the scope, amount, and duration of any price adjustment. Any price adjustments approved by the County will be made with no overhead or profit markup from subcontractor or contractor. Increases to the contractor for insurance and/or bond costs will be considered if applicable.

- I. County and Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

7.42. Value Engineering

A. Intent and Objective: This Section applies to any cost reduction proposal (hereinafter referred to as a Value Engineering Change Proposal or VECP) initiated and developed by the Contractor for the purpose of refining the Contract Documents so as to contribute to design cost effectiveness or significantly improve the quality of the Work. This Section does not, however, apply to any such proposal unless it is identified by the Contractor, at the time of its submission to the County, as a proposal submitted pursuant to this Section.

VECPs contemplated are those that would result in net savings to the COUNTY by providing either: (A) a decrease in the cost of performance of the Work, or; (B) a reduction in cost of ownership (hereinafter referred to as collateral costs) of the Work, regardless of acquisition costs.

VECPs must result in savings without impairing essential functions and characteristics such as safety, service, life, reliability, economy of operation, ease of maintenance, aesthetics and necessary standard design features. However, nothing herein prohibits the submittal of VECPs where the required functions and characteristics could be combined, reduced or eliminated as being nonessential or excessive.

Plan errors which are identified by the Contractor and which result in a cost reduction, will not qualify for submittal as a VECP.

The COUNTY reserves the right to reject at its discretion any VECP submitted. Substitution of another design alternate, which is detailed in the Plans, for the one on which the Contractor bid, will not be allowed under this Section. Pending execution of a formal supplemental Agreement, implementing an approved VECP, the Contractor shall remain obligated to perform in accordance with the terms of the existing Contract.

No time extensions will be granted due to the time required to review a VECP.

B. Subcontractors: The Contractor is encouraged to include the provisions of this Section in contracts

with subcontractors. The Contractor shall encourage submission of VECPs from subcontractors, however, it is not mandatory that VECPs be submitted nor is it mandatory that the County accept or transmit to the County VECPs proposed by his subcontractors.

C. Data Requirements: As a minimum, the following information shall be submitted by the Contractor with each VECP;

(1) A description of the difference between the existing requirements and the proposed change, and the comparative advantages and disadvantages.

(2) Separate detailed cost estimates for both the existing requirements and the proposed change. The cost estimates shall be broken down by item numbers indicating quantity increases or decreases and deleted pay items. Additional proposed Work, now covered by the Contract Documents, shall be identified by current County pay item numbers. In preparing the estimates, the Contractor shall include overhead, profit and bond. No separate pay item(s) for these costs will be allowed.

(3) An itemization of plan details, plan sheets, design standards and Specifications that must be changed or added if the VECP is adopted. Preliminary plan drawings must be sufficient to describe the proposed changes.

(4) An estimate of the effects the VECP would have on collateral costs to the County.

(5) Engineering Incentive or other analysis in sufficient detail to identify and describe specific features of the Contract Documents which must be changed if the VECP is accepted, with a proposal as to how these changes can be accomplished and an assessment of their effect on other Project elements. The County may require that Engineering Incentive analyses be performed by a prequalified consultant in the applicable class of Work. Any design changes which result from the VECP must be supported by computations sealed by a Professional registered in the State of Florida.

(6) A statement of the time by which approval of the VECP must be issued by the County to obtain the total estimated cost reduction during the remainder of this Contract noting any effect on the Contract completion time or delivery schedule.

D. Processing Procedures: Two copies of each VECP shall be submitted to the County's Project Manager, or his/her duly authorized representative, VECPs will be processed expeditiously; however, the County will not be liable for any delay in acting upon a VECP submitted pursuant to this Section.

The Contractor may withdraw, in whole or in part, a VECP not accepted by the County within the period specified in the VECP. The County shall not be liable for any VECP development cost in the case where a VECP is rejected or withdrawn. The County shall be the sole judge of the acceptability of a VECP and of the estimated net savings in construction and/or collateral costs from the adoption of all or any part of such proposal.

In determining the estimated net savings, the right is reserved to disregard the Contract prices if, in the judgment of the County, such prices do not represent a fair measure of the value of Work to be performed or to be deleted.

Prior to approval, the County may modify a VECP, with the concurrence of the Contractor, to make it

acceptable. If any modification increases or decreases the net savings resulting from the VECP, the Contractor's fair share will be determined upon the basis of the VECP modified and upon determination of final quantities. The net savings shall be computed by subtracting the revised total cost of all bid items affected by the VECP design from the total cost of the same bid items as represented in the Contract Documents.

Prior to approval of the VECP, which initiates the supplemental Contract, the Contractor shall provide acceptable contract quality Plan sheets revised to show all details consistent with the VECP design.

E. Computations for Change in Contract Cost of Performance: Contractor development and implementation costs for the VECP will not be recoverable. If the VECP is adopted, the Contractor's share of the net savings as defined hereinafter shall be considered full compensation to the Contractor for the VECP. County costs of processing or implementation of a VECP will not normally be considered in the estimate. However, the County reserves the right, where it deems such action appropriate, to require the Contractor to pay the County's cost of investigating and implementing a VECP submitted by the Contractor as a condition of considering such proposal.

Where such a condition is imposed, the Contractor shall indicate his acceptance thereof in writing, and such acceptance shall constitute full authority for the County to deduct amounts payable to the County from any monies due or that may become due to the Contractor under the Contract.

F. Computations for Collateral Costs: When collateral cost savings are sought by the Contractor, separate estimates must be prepared for collateral costs of both the existing Contract requirement and the proposed change.

Each estimate shall consist of an itemized breakdown of all costs and the basis for the data used in the estimate. Cost benefits to the County include, but are not limited to: reduced costs of operation, maintenance or repair, and extended useful service life. Increased collateral costs include the converse of such factors. Computations shall be as follows:

Costs shall be calculated over a 20-year period on a uniform basis for each estimate.

If the difference in the estimates as approved by the County indicate a savings, the Contractor shall divide the resultant amount by 20 to arrive at the average annual net collateral savings. The resultant savings shall be shared as stipulated in paragraph G below.

G. Sharing Arrangements: If a VECP is approved by the COUNTY, the Contractor may be entitled to share in both construction savings and collateral savings to the full extent provided for in this subsection. Except for innovative ideas, the Contractor and the County shall each receive 50 percent of net reduction in the cost of performance of this Contract. For innovative ideas, the reduction in the cost of performance shall be shared as follows:

ACCRUED NET CONTRACTOR'S	COUNTY'S
SAVINGS SHARE %	SHARE %

Less than \$25,000 85 15

\$25,000 to \$50,000 75 25

Over \$50,000 50 50

If an approved change is identical or similar to a previously submitted VECP or an idea previously utilized by the County it will not be considered an innovative idea, thus, will only qualify for a 50 percent sharing of savings.

When collateral savings occur, the Contractor shall receive 20 percent of the average one year's net collateral savings. The Contractor shall not receive construction savings or collateral savings on optional Work listed in this Contract until the County exercises its option to obtain that Work.

7.43. Patents And Royalties

Unless otherwise provided, the Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of the contract.

The Contractor, without exception, shall indemnify and save harmless the County and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or supplied by the Contractor. In the event of any claim against the County of copyright or patent infringement, the County shall promptly provide written notification to the Contractor.

If such a claim is made, the Contractor shall use its best efforts to promptly purchase for the County any infringing products or services or procure a license, at no cost to the County, which will allow continued use of the service or product. If none of the alternatives are reasonably available, the County agrees to return the article on request to the Contractor and receive reimbursement, if any, as may be determined by a court of competent jurisdiction.

7.44. Owner Direct Purchase

Pursuant to Florida Statutes, Section 212.08(6), and Florida Administrative Code, Number 12A-1.094, Orange County Florida is exempt from Florida Sales Tax for the purchase of construction materials, supplies and/or equipment incorporated into a construction project.

For construction Contracts valued at \$10,000,000, or lesser amounts as determined by the County, the County may, at its discretion, use the direct purchase method for large dollar value equipment and materials that realize a tax savings of at least \$5000.

Direct purchases will be negotiated with the Contractor based on those items identified by the Professional. The final determination as to whether to direct purchase any materials or equipment shall be made by the Manager of the Procurement Division after consultation with the County's Project Manager.

When it has been determined that the use of direct purchases is warranted, the, Orange County Owner Direct Purchase Provision in the [#Special Terms and Conditions](#) shall govern.

7.45. Qualifications of Subcontractors and Suppliers

The Project Manager will notify the Contractor in writing if the Project Manager, after due investigation, has reasonable objection to any Subcontractor or Supplier engaged on this project. If the Project Manager has reasonable objection to any Subcontractor or Supplier, the Contractor shall submit another acceptable one to the County. No increase in Contract Amount or Contract Time will be allowed under this article, unless Contractor can prove substantial increase due to the change, in which case Contractor may request an equitable adjustment to the Contract Amount or Contract Time. If Contractor requests an equitable adjustment as a result of a requested change, Contractor shall make available to the County all documents necessary, as requested by the County, to substantiate such adjustment.

The failure of the Project Manager to make objections to any Subcontractor or Supplier on the list shall not constitute a waiver of any right of the County to reject defective Work, material or equipment; or work, material or equipment not in conformance with the requirements of the Contract Documents. Should the Contractor desire to add, change or delete a Subcontractor or Supplier previously listed, the Contractor shall submit written justification for said change to the Project Manager for consideration prior to the new Subcontractor or Supplier performing any Work.

7.46. Contract Claims/Dispute Resolution

“Claim” as used in this provision means a written demand, written assertion, or written dispute by one of the contracting parties seeking as a matter of right, the payment of a certain sum of money, the adjustment or interpretation of contract terms, or other relief arising under or relating to this Contract.

Claims made by a Contractor against the County relating to the Contract shall be submitted to the Procurement Division Manager in a writing clearly labeled “Contract Claim”.

Any Claim regarding a change in the Contract Amount or the Contract Time will be rejected as premature and shall not be eligible for review under this “Contract Claims/Dispute Resolution” provision unless the parties have already failed to agree to any such adjustments in the manner provided in the Article titled *“Change of Contract Amount and Contract Time”* in this Contract.

The Contractor assumes all risk for the following items, none of which shall be the subject of any claim and none of which shall be compensated: (1) home office expenses or any Direct Costs incurred allocated from the headquarters of the Contractor; (2) loss of anticipated profits on this or any other project, (3) loss of bonding capacity or capability; (4) losses due to other projects not bid upon; (5) loss of business opportunities; (6) loss of productivity on this or any other project; (7) loss of interest income on funds not paid; (8) costs to prepare, negotiate, or prosecute Claims; and (9) costs spent to achieve compliance with applicable laws and ordinances.

Claims filed by the Contractor shall be filed in full accordance with this article no later than 30 calendar days after the event giving rise to the Claim. In the case of continuing or on-going Claim events, the Contractor shall be allowed to periodically amend its Claim to more accurately reflect the impact of said Claim, until the end of the Claim event. No Claims for additional compensation, time extension or for any other relief under the Contract shall be recognized, processed, or treated in any manner unless the same is presented in accordance with this Article. Failure to present and process any Claim in accordance with this Article shall be conclusively deemed a waiver, abandonment, and relinquishment of such Claim, it being expressly understood and agreed that the timely presentation of Claims, in

sufficient detail to allow proper investigation and prompt resolution thereof, is essential to the administration of this Contract.

For a Claim to be valid and sufficient, it must be timely submitted to the Procurement Division Manager and include all of the following:

- A. The relevant County Contract number, County Purchase Order number, and County Delivery Order number (if applicable);
- B. The date upon which the underlying event leading to the Claim occurred. For continuous or ongoing events, such date shall be the first date on which the underlying event began;
- C. A comprehensive and detailed explanation of the underlying event and the remedies sought, including itemized costs associated with such Claim including but not limited to labor, equipment, material, subcontractor and supplier costs, and all other costs related to the Claim; and

In the event that the Contractor has multiple Claims, the Contractor may submit one overarching document, but such document must clearly segregate each Claim individually and provide the information required in paragraphs A through C above for each individual Claim. Failure to segregate multiple Claims and their respective costs will be grounds for the County's rejection of the entire document and all Claims provided for therein. No aggregate or "total cost" Claims shall be allowed under this Contract.

Additionally, to be valid, all Claims filed must be accompanied by the following sworn certification: *"I certify that this Claim is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that any amount requested in this Claim accurately reflects the contract adjustment for which the Contractor believes the County is liable; and that I am duly authorized to certify this Claim on behalf of the Contractor."*

Failure to document and submit a Claim in accordance with the provisions of this Article shall render the Claim null and void. Moreover, no Claim shall be accepted after Final Payment of the Contract.

The decision of the Procurement Division Manager regarding each Claim submitted will be issued in writing and furnished to the Contractor by certified mail. Such decision will state the reasons for the conclusions reached. The Procurement Division Manager will render the final decision within 60 days after receipt of Contractor's written Claim submittal. The Procurement Division Manager's decision shall be final and conclusive.

If either party wishes to protest the decision of the Procurement Division Manager, such party may commence an action in a court that meets the venue requirements of this Contract, within the periods prescribed by law, it being understood that the review of the court shall be limited to the question of whether or not the Procurement Manager's determination was arbitrary and capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.

Nothing in this Article shall be interpreted to preclude the County and the Contractor from mutually negotiating settlement on any Claim submitted, should the Procurement Division Manager in consultation with the County Administrator and the County Attorney's Office determine, using their sole

discretion, that such settlement negotiation is warranted. Any such settlement on a Claim must be approved by the Board of County Commissioners.

The Contractor shall proceed diligently with performance of this Contract pending final resolution of any request for relief, claim, appeal, or action arising under the Contract and unless, otherwise determined by a court of competent jurisdiction in the event an action is filed, shall comply with any final decision rendered by the Procurement Division Manager.

7.47. Starting the Work

- A. Generally – The Contractor shall start the Work within 14 calendar days of the official *Notice to Proceed* date. The Contract Time shall commence on the effective date of the *Notice to Proceed*. Should any Work begin before receipt of the official *Notice to Proceed* and Purchase Order, it will be solely at the Contractor’s own risk and shall not obligate the County in any way.
- B. Preconstruction Conference – Within 20 days after the effective date of the Contract, and before the issuance of the *Notice to Proceed* by the County, the Contractor shall attend a Pre-Construction Conference with the Project Manager, Design Professional, and other appropriate individuals to discuss matters regarding the Project. Such discussion will include, but will not be limited to, the following topics as applicable to the Project: schedules, procedures for handling Shop Drawings and other submittals, procedures for processing Applications for Payment, maintenance of traffic considerations, coordination with affected utilities, setting the *Notice to Proceed* date, and establishing a working understanding among the parties as to the Work and the Contractor’s obligations under the Contract Documents.
- C. Schedule of Values – The Contractor shall submit a Schedule of Values for the work including quantities and unit prices totaling the total Contract Amount prior to the issuance of the *Notice to Proceed* by the County. The Schedule of Values shall be prepared in such a form satisfactory to the County and must be supported by such data to substantiate its accuracy, as the Project Manager may require.

The Schedule of Values shall subdivide the Work into sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of the Schedule of Values by the Project Manager, it must be incorporated into the form of Application for Payment prescribed by the County.

The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract.

- D. Progress Schedule (“CPM”) – The Contractor shall create and provide to the Project Manager a Progress Schedule that utilizes the Critical Path Method (“CPM”). Such Progress Schedule shall be prepared using software approved by the County; the software shall be specifically intended for the preparation of construction schedules incorporating a critical path. The software used by the Contractor must be approved in advance by the County. The Contractor shall submit a Progress Schedule CPM (by either electronic file, hard printed copy, or as otherwise directed by the Project Manager) prior to receipt of the *Notice to Proceed*. The Progress Schedule CPM shall

clearly identify all controlling items of Work and activities defined as the critical path, which if delayed or prolonged, will delay the time of completion of the Contract. The critical path shall include a minimum 10% float time as part of the Contract Time for unforeseen conditions. Contractor shall provide additional float time above the required minimum 10% based on their experience, understanding of the scope, and inspection of the Site.

7.48. Interpretation and Intent of the Construction Documents

It is the intent of the Specifications and Drawings to describe the complete Work to be constructed in accordance with the Contract Documents. However, the County makes no representation or warranty of any nature whatsoever to the Contractor concerning such documents. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error or discrepancy in the Contract Documents, he shall call it to the Project Manager's attention in writing before proceeding with the Work affected thereby. Any work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well known technical or trade meaning shall be deemed to refer to such recognized standards. In case of conflict, the more stringent requirements shall take precedence and govern.

Written clarifications or interpretations (which shall be consistent with or reasonably inferable from the Contract Documents) will be issued in response to a Contractor Request for Interpretation (RFI) or as the Project Manager or Professional may otherwise determine necessary. If the Contractor believes a written clarification or interpretation justifies an increase in Contract Amount or Contract Time, the Contractor shall make a claim for such increase in accordance with the Article titled "Change of Contract Amount and Contract Time" herein. If the Contractor is authorized by the County to proceed with the Work involved before full agreement is reached on (a) whether any increases are due at all, or (b) the extent of any such increases (if any are determined to be due), the Contractor shall furnish daily to the Project Manager, or Professional, actual cost records.

7.49. Change of Contract Amount and Contract Time

Contract Amount- The Contract Amount 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 Amount. The Contract Amount may only be changed by written Change Order issued by the County. Any claim for an increase in the Contract Amount shall be in writing and delivered to the Project Manager within fifteen (15) days of the occurrence of the event giving rise to the claim.

All claims for adjustment in the Contract Amount shall be determined by the Project Manager. However, no claim for an adjustment to the Contract Amount will be considered for unforeseeable causes that were beyond the fault or negligence of the Contractor or his Subcontractors or supplier such as acts of God, floods, riots, etc. This restriction does not restrict submission of claims for additional Contract Time due to events of this nature. Any change in the Contract Amount shall be incorporated in a Change Order.

Proposals or Claims Substantiating Adjustments; Limitations:

A. The Contractor proposals or claims shall cover all aspects of the Work involved and shall be fully documented and itemized as to all costs, quantities and charges for overhead and profit. Amounts for Subcontractors or Suppliers at any tier shall be similarly supported. When determining Subcontractors' costs, the methods to be used shall be those used for the Contractor's costs, except that the term "Subcontractor" shall replace the term "Contractor," context permitting.

B. Where the change in Contract Amount arises from changes in the time required to perform any Work, or where a change in Contract Time is sought, the Contractor's itemized estimates shall detail all productivity and production data, and include an analysis of the Record Schedule demonstrating the schedule status just before and after the occurrence of events on which the request is based (thereby showing the extent of delay resulting from the event involved) and any measures taken or planned to mitigate the impacts.

C. Neither the Contract Time nor Contract Amount shall be changed due to a delay in Contractor's early completion date until all the corresponding Contract Float available in the Record Schedule at the start of the delay is used and performance of the specified Work extends necessarily beyond that Contract Time. The Contractor shall not recover from the County (a) acceleration costs incurred to overcome delays which warrant extensions in Contract Time but exclude changes in Contract Amount, (b) escalation costs for any part of the Work having Contract Float or not delayed beyond the late dates in the Record Schedule, or (c) delay costs not expressly allowed herein, as supplemented.

D. Changes in Contract Amount for extensions in Contract Time shall exclude costs that are unaffected or do not relate to the extension in Contract Time, such as: (a) operating costs of construction equipment assigned to the Work on a continuing basis, (b) operating costs and owned/rental costs of construction equipment (crane used for specific lifts, concrete pump used for specific pours, etc.), and (c) fully paid site facilities, tools, etc.

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

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

If the quantities originally contemplated are so changed in a proposed Change Order, that application of the Unit Prices to the quantities proposed will cause substantial inequity to the County or the Contractor, the applicable unit price(s) shall be equitably adjusted by mutual agreement.

B. By mutual acceptance of a lump sum.

C. By cost and mutually acceptable fixed amount for overhead and profit.

D. If the value of work covered by a Change Order cannot be established or mutually agreed to utilizing any of the above three methods, the value shall be determined by the County on the basis of an estimate of the out of pocket cost and percentages that are acceptable to the County for overhead and profit. The out of pocket cost shall only include those direct costs which are needed to perform the work such as labor (including payroll taxes, labor burden and workers' insurance), materials, equipment, and other incidental out of pocket construction costs directly involved in the work, including but not limited

to small tools, expendables and material costs but shall not include project management or project supervisory costs.

Methods for Determining Adjustments in Contract Amount:

A. If the County directs the Contractor to proceed with the Work involved pursuant to actual out-of-pocket costs plus contractual allowances for overhead and profit and states a Not-to-exceed price, Contractor claims for costs, overhead or profit beyond the Not-to-exceed price shall be invalid, unless, prior to incurring those costs, overhead or profit Contractor provides written notice and County increases the Not-to-exceed price in writing..

B. If payment for the Work involved is to be determined by a court of law, it is agreed by the Contractor that the actual out-of-pocket cost and overhead and profit method contained in the General and Supplemental Conditions shall represent an appropriate method for determining the cost and overhead and profit for the Work involved.

C. In computing Cost of the Work involved in a Change Order or claim, costs shall be allowable only to the extent costs (a) are consistent with those prevailing in the Orlando Metropolitan Statistical Area (which includes Orange, Seminole, Lake and Osceola Counties) and with applicable criteria set forth in 48 CFR Part 31 (federal contract cost principles and procedures), (b) include only the appropriate items for labor, material or equipment, construction equipment and special cost items specified herein.

In such case, the Contractor shall submit in the form prescribed by the County an itemized cost breakdown together with supporting data.

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 the amount of the actual net decrease as determined by the County. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.

To be eligible for consideration, the Contractor's written claim for a change in the Contract price, including claim(s) from sub-contractors, shall include an itemized cost breakdown with supporting data as described below:

A. For labor: Provide written documentation from the Contractor and Subcontractors or others as appropriate in the form of a detailed breakdown by each labor classification involved indicating the number of hours of Work involved and the hourly payroll rate applicable to each to substantiate the basis and amount of the direct labor cost. The direct labor cost may be increased to provide an allowance for indirect payroll costs (labor burden), such as payroll taxes, fringe benefits, and workers insurance after all premium discounts, rebates and other appropriate reductions have been taken.

Allowable labor costs shall be limited to craft labor (including foremen) in the direct employ of the Contractor (or Subcontractor) assigned to the site and engaged in furnishing and incorporating materials or equipment in the Work involved in the Change Order or Claim.

When determining actual payroll costs, daily time sheets certified by the Contractor and verified by the Project Manager along with certified payroll records shall be the valid records.

B. For material, supplies, equipment, furnishings, etc., to be installed or included in the Work: Provide written documentation from the Contractor and Subcontractors, suppliers, etc., to substantiate the basis and amount of the various cost items involved. Material costs shall reflect the Contractor's reasonably anticipated net actual cost after consideration of trade discounts and volume rebates.

C. For construction equipment: Provide written documentation in the form of a detailed breakdown by each construction equipment category indicating, the applicable unit rates (i.e., \$'s per hour, \$'s per day etc.,) and the number of hours, days, etc. to substantiate the basis and amount of the construction equipment out-of-pocket costs.

D. Special cost items (any out-of-pocket cost items not considered to be material, labor or construction equipment as set forth above including but not limited to small tools and expendables): Provide written documentation in the form of a detailed breakdown or itemization of the costs, fees, charges, hours, hourly rates, etc., to clarify, document and substantiate the basis and amount of the out-of-pocket cost. Special cost items due to the Work or a delay involved in a Change Order or Claim may include a proportion of the following indirect costs, to the extent those indirect costs increase or decrease on account of (a) the Cost of the Work involved for labor, Subcontractor or Supplier furnished materials or equipment, or (b) an extension in Contract Time as follows (provided that no cost shall be paid for holidays or weather days during the delay):

1. Payroll costs for the Contractor's full-time superintendent and payroll costs for other personnel in the employ of the Contractor resident (engaged in activities) at the site if those costs arise solely from an extension in Contract Time;

2. Costs of small tools and expendables (less market value if not consumed) of items individually valued at less than \$1,000.00 that are not owned by the workers, if the Contractor provides an itemized list of items required for the performance of the Work involved; however, no such costs shall be allowed over 4% of the direct labor costs, unless the Contractor furnishes detailed data sufficient to allow verification that a higher percentage is appropriate for the Work involved;

3. Costs of office and temporary facilities at the site, including utilities, fuel and sanitary facilities, telephone and internet service at the site, materials, supplies, equipment, other minor expenses (e.g. expressage and petty cash), if those costs arise solely from an extension in Contract Time;

4. Costs of consultants not in the direct employ of the Contractor, if those costs are or were authorized by the County before proceeding with the Work involved;

5. Taxes on the Work involved, and for which the Contractor is liable; and royalty payments and charges and fees for permits, if any of them relate solely to the Work involved;

6. Physical losses, damages and expenses to the Work, not compensated by property insurance, or otherwise to be sustained by the Contractor in the prosecution of the Work (except losses and damages within the deductible amounts of property insurance, if any), but only if the losses, damages and expenses result from the fault or negligence of the County, or

7. Bond premiums and insurance premiums not included as part of the indirect labor cost, if they relate solely to the Work involved.

E. Construction Equipment Costs:

1. For equipment owned by Contractor (or Subcontractor) or rented or leased from lessors associated with or owned by them, allowable costs shall be limited to equipment required for the Work involved in a Change Order or claim with individual replacement values exceeding \$1,000.00. Transportation, loading/unloading, installation, dismantling and removal costs shall be allowed only if prior written consent is obtained from the Project Manager, and if the equipment is, or was, transported to the site solely for the Work involved. Shipping costs will be allowed only if the equipment is not available in the Orlando Metropolitan Statistical Area.

The Contractor shall be entitled to ownership and operation costs of the equipment based on the Contractor's normal accounting practices, but in no event shall equipment ownership or operation costs exceed the applicable hourly rates listed in a mutually acceptable current cost reference guide. For multiple shifts, the equipment rate shall not exceed the shift Work adjustments recommended in the agreed upon cost reference guide.

Equipment costs shall be computed using the same accounting and estimating rules and prices, whether related to added or deleted Work, and shall cease when the equipment is no longer needed for the Work involved.

2. For equipment rented or leased from lessors not associated with or owned by the Contractor (or Subcontractor), the Contractor shall be entitled to rental or lease rates, but in no event shall the rates or hourly operating costs exceed applicable rates in a mutually acceptable current cost reference guide for rental equipment. The equipment rate for second or third shifts shall not exceed fifty percent (50%) of the base rate. Hourly rates for equipment previously in use at the site for at least a month shall be based on the monthly rate divided by 176 hours. Equipment previously in use for only one week or not previously in use at the site shall not be invoiced to the County at rates higher than the following schedule correlating equipment usage to payment category:

- Less than 8 hours Hourly Rate
- 1 day but less than 7 days Daily Rate
- 1 week but less than 30 days Weekly Rate
- 30 days or more (when in use) Monthly Rate

3. Rented (or owned) equipment idled by actions of the County for reasons under the sole control of the County shall be paid as rented equipment (or as one-half of owned equipment), provided the idle period exceeds what is normal for such equipment and occurs during normal working hours.

When determining actual construction equipment costs, daily logs of the equipment, operators and actual usage, verified by the Project Manager, shall be the valid records.

With respect to the allowances for overhead and profit the following schedule shall be used in determining the total cost of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract price:

A. For the Contractor, for Work (i.e., the cost of labor, materials and construction equipment as described above) performed by the Contractor's own forces; 15% of the cost.

B. For the Contractor, for the Work performed by the Contractor's Subcontractor; 7 ½% of the amount due the Subcontractor.

C. For each Subcontractor involved, for Work performed by that Subcontractor's own forces 7 ½% of the cost.

D. For each Subcontractor, for Work performed by the Subcontractor's Sub-Subcontractor's 5% of the amount due the Sub-Subcontractor.

E. Cost to which overhead and profit is to be applied shall be determined in accordance with provisions of this Article.

F. The Cost of the Work involved in a Change Order or claim shall not include any of the following costs (considered administrative costs or contingencies covered by the overhead and profit):

1. Payroll costs and other compensation of (a) executives, general and administrative managers, estimators, claim consultants, attorneys, accountants, labor relation coordinators, contract and subcontract administrators, purchasers, expeditors and other administrative staff, whether employed at the site or in the Contractor's (or Subcontractor's) principal or branch offices; and (b) project managers, construction managers, engineers, architects, schedulers, detailers, safety personnel, clerks and other administrative staff employed in his principal or branch offices;
2. Costs in the preparation of Change Orders or claims (whether or not ultimately authorized by the County);
3. Costs of engineers, architects, accountants, consultants, attorneys and others, in the direct employ of the Contractor or otherwise, utilized for services related to a controversy or claim about the acceptability of the Work;
4. Any part of the Contractor's capital expenses, including interest on capital for the Work involved, lost interest on unpaid retainage, and charges for delinquent payments;
5. Any other expenses of the Contractor's principal and branch offices, including storage and yard facilities; and any costs not specifically and expressly allowed in this article, as supplemented.

If deemed necessary, the overhead and profit allowance schedule shown above may be adjusted by the Project Manager.

Cash Allowances - It is understood that the Contractor has included in the Contract Amount any allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Suppliers or Subcontractors and for such sums within the limit of the allowances as the County may accept. Prior to final payment, the Contract Amount shall be adjusted as required and an appropriate Change Order issued. The Contractor agrees that the original Contract amount includes such sums as he deems proper for cost and profit on account of cash allowances. No demand for additional cost or profit in connection therewith will be allowed.

Change of Contract Time - The Contract Time may only be changed by written Change Order. Any claim for an extension in the Contract Time shall be in writing and include an analysis of the Progress Schedule as further described in the Specifications, and shall be delivered to the Project Manager within fifteen (15) days of the occurrence of the event giving rise to the claim.

All claims for adjustment in the Contract Time shall be determined by the Project Manager. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

The Contract Time may be extended for an amount equal to time lost due to unforeseeable causes beyond the control of the Contractor (and his Subcontractors and Suppliers) if he makes a claim therefore. Such delays shall include, but not be restricted to, acts or neglect by any separate Contractor employed by the County; fires; floods; labor disputes; epidemics or acts of God.

All time limits stated in the Contract Documents are of the essence to the Contract. The stated time limits are agreed to be adequate to complete the work, including the procurement, manufacture and delivery of all material and equipment required, and account for any and all potential impact, delays, disruptions and costs that may be expected.

7.50. Payment

A. Payment Format –

1. Progress Payments – If this Contract is for a stipulated amount or “lump sum”, the County will, based on Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, make progress payments on account of the Contract Amount as provided below and elsewhere in the Contract Documents. A Line-Item/Itemized Application for Payment may be required for Applications for Payment related to completion of the Final Punch List items or in any other such instance where the Project Manager determines that such format is appropriate.
2. Line-Item/Itemized Payments – If this Contract is for line-item or itemized payment, the County will, based on Applications for Payment submitted to the Project Manager by the Contractor and Certificated for Payment issued by the Project Manager, make payment for actual constructed and accepted quantities of each Pay Item.

B. Applications For Payment – In order for the Contractor to have submitted a proper Application for Payment that is compliant with this Contract’s requirements, such Application for Payment must meet all of the applicable requirements in this Contract and elsewhere in the Contract Documents, including but not limited to those found below.

1. Submittal – Applications for Payment submitted to the Project Manager will be processed and paid in compliance with Section 218.735, Florida Statutes, and in accordance with the terms and conditions provided below and elsewhere in the Contract Documents.
2. Frequency – Applications for Payment shall be submitted monthly, unless otherwise mutually agreed upon and approved in writing by the Project Manager at the Pre-Construction Conference. The forgoing notwithstanding, Applications for Payment are not permitted to be submitted more often than once a month.
3. Due Date – Applications for Payment shall be due to the County on the 15th of the month following the period for which the Application for Payment is requesting payment, unless

otherwise mutually agreed upon and approved in writing by the Project Manager at the Pre-Construction Conference.

4. Form of Applications for Payment –

a. All Applications for Payment: All Applications for Payment submitted under this Contract must include, at minimum, the following information, as well as any other applicable information found in this Contract or elsewhere in the Contract Documents:

- i. Unique Invoice Number
- ii. Name of Contractor
- iii. "Pay-To" Address of Contractor
- iv. Date of Application for Payment
- v. Beginning and End Dates for Time Period Covered
- vi. Orange County Purchase Order No.
- vii. Orange County Contract No.
- viii. Orange County Delivery Order No. (Term Contracts Only)
- ix. Total Payment Request Amount
- x. Required Certification on the face of each Application for Payment: "The undersigned Contractor certifies that the Work covered by this Application for Payment has been done or completed in accordance with the Contract documents, that all amounts have been paid by Contractor for work, supplies, materials, or equipment for which previous payments by the County have been issued, and that the current payment shown herein is now due."

b. Applications for Line-Item/Itemized Payment: In addition to the "All Applications for Payment" requirements above, Applications for Line-Item/Itemized Payment must additionally include for each Pay Item –

- i. Pay Item No.
- ii. Item Description
- iii. Quantity
- iv. Unit Price
- v. Unit of Measure
- vi. Total Price

- c. All Applications for Progress Payment: In addition to the “For All Applications for Payment” requirements above, Applications for Progress Payment must additionally include:
 - i. Original Contract Amount
 - ii. List of Approved Change Orders with Amounts
 - iii. Net Change Order Amount
 - iv. Contract Amount to Date
 - v. Total Completed and Stored to Date
 - vi. Retainage Percentage (if applicable)
 - vii. Amount Retained
 - viii. Total Earned Less Retainage
 - ix. Total Previously Paid
5. Supporting Documentation Requirements – Each Application for Payment (or any other invoice or request for payment submitted in relation to this Contract) must be submitted with the following required documentation attached:
 - a. The Contractor may, at the discretion of the County's Project Manager, be required to have applications for Progress Payments accompanied by Consent of Surety to Partial Payment. However, if payment or performance bonds are not required by the contract, the County’s Project Manager may require applications for Progress Payments to be accompanied by legally effective partial releases or waivers of liens executed by all Subcontractors that performed services and suppliers of material or equipment for the Contractor for services or supplies which were included in the previous Application for Progress Payment. The Contractor shall include the following certification on each Application for Progress Payments and the Application for Final Payment:

"The undersigned Contractor certifies that the work covered by this application for payment has been done, or completed in accordance with the Contract documents, that all amounts have been paid by Contractor for work, supplies, material or equipment for which previous Certificates for Payment were issued and that the current payment shown herein is now due".
 - b. If payment and performance bonds were not required for this Contract, submit legally effective partial releases or waivers of liens executed by all Subcontractors that performed services for or supplied materials or equipment to the Contractor for services or supplies which were included in the previous Application for Payment. The Project Manager may, using their sole discretion, determine that such releases or waivers of

- liens by Subcontractors are additionally required for Contracts where payment and performance bonds are required.
- c. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, submit such supporting data, satisfactory to the Project Manager, as will establish the County's title to the material and equipment and protect its interest therein, including applicable insurance, partial Consent of Surety and a valid Power of Attorney for Surety, and detailed inventory listing of stored material. Each such request shall include the submittal by the Contractor of:
- i. A detailed, itemized inventory listing the material stored at the site for which payment is requested;
 - ii. Documentation to indicate and substantiate the cost or value attributed to the items included in the stored material inventory list; and
 - iii. The County's "Responsibility And Liability For Materials And Equipment Not Included In The Work" form executed by the Contractor.
- d. Update Schedules CPM –
- i. Generally: If requested by the Project Manager, the Contractor shall submit an Update Schedule CPM to the Project Manager concurrent with each Application for Payment. The Update Schedule CPM shall focus on the period from the last Update Schedule CPM to the current Update Schedule CPM submitted with the Application for Payment. Activities that have either started or finished shall be reported as they actually occurred and designated as complete, if actually completed. For activities in progress that are forecasted to complete longer than planned, the remaining durations shall be revised, not the original durations. All out of sequence activities shall be reviewed and their relationships either verified or changed. The Contractor's failure to submit both an Update Schedule CPM and Update Schedule Narrative Report, when requested by the Project Manager, with an Application for Payment shall be sufficient reason for rejection of the Application for Payment as improper for failure to meet the requirements of this Contract.
 - ii. Update Schedule Narrative Report: Each Update Schedule CPM requested by the Project Manager shall be accompanied by a written Update Schedule Narrative Report. This Narrative Report shall describe the physical progress during the report period, plans for continuing the Work during the forthcoming report period, actions planned to correct any delays, and a detailed explanation of potential delays or problems and their estimated impact on performance, milestone completion dates, the forecasted completion date, and the forecasted substantial completion date. In addition, alternatives for possible schedule recovery to mitigate any potential delays

shall be discussed.

Each Update Schedule Narrative Report submitted by the Contractor shall follow the outline set forth below:

Contractor's Narrative Report Outline:

- I. Contractor's dated transmittal letter.
 - II. Work completed during the report period.
 - III. Description of the current critical path
 - IV. Description of problem areas
 - V. Current and anticipated delays
 - (a) Cause of the delay
 - (b) Corrective action and schedule adjustments to correct the delay.
 - VI. Impact of the delay on other activities, milestones, and completion dates.
Changes in construction sequences
 - VII. Pending items and status thereof:
 - (a) Permits
 - (b) Change orders
 - (c) Time extensions
 - VIII. A list of all outstanding Contract Claims and Application for Payment disputes and a detailed description of each such claim or dispute.
 - IX. Contract completion date status:
 - (a) Ahead of schedule and number of days.
 - (b) Behind schedule and number of days.
- iii.
- iv. Project Manager Review – The Contractor shall submit each Project Manager required Update Schedule CPM and associated Narrative Report to the Project Manager by electronic file, hard printed copy, or as otherwise directed by the Project Manager. The Project Manager will review the Contractor's Progress Schedule CPM, Update Schedules CPM, and their associated Narrative Reports. The Project Manager may accept or reject Update Schedules CPM or any associated Narrative Reports. Rejected Update Schedules CPMs and any associated Narrative Reports shall be corrected and re-submitted to the Project Manager.

6. Other Requirements –
- a. Contractual Obligations: The Contractor must be current on all of its obligations under this Contract and as provided elsewhere in the Contract Documents, including but not limited to any submittals required in the Contract Documents such as, but not limited to, having current and valid insurance coverage or submission of any reports required by the County’s Minority and Business Enterprise Ordinance (if applicable). In lieu of, or in addition to, rejecting an improper Application for Payment for lack of compliance with the requirements of the Contract due to missed or delayed submittals or reports, the County reserves the right but has no obligation to, at the discretion of the Project Manager in consult with the County’s Procurement Division Manager or their designee: (i) issue a Notice to Cure; (ii) issue a Notice of Termination for Cause; (iii) partake in any other remedy available to it at law or equity; or (iv) any combination of the foregoing.
 - b. Contractor's Warranty Of Title: By submitting each Application for Payment to the County, the Contractor warrants and guarantees that title to all work, materials, and equipment covered by any such Application for Payment submitted, whether incorporated in the Project or not, passed to the County prior its submission of any Application for Payment free and clear of all liens, claims, security interests and encumbrances; and that no work, materials, or equipment covered by any Application for Payment submitted by the Contractor is in any manner encumbered or has any interest retained therein or otherwise imposed thereupon by the Contractor or any other person or entity.
 - c. Additionally, the Project Manager's approval of Final Payment shall constitute an additional representation by them to the County that the conditions precedent to the Contractor being entitled to Final Payment as set forth in this “Contractor’s Warranty of Title” provision have been fulfilled. The Project Manager may refuse to approve the whole or any part of any payment if in their opinion the Contractor is unable to make such representations to the County.
7. Application for Payments that do not comply with the above provisions shall grant the County cause to reject and dispute any such Application for Payment for failure to meet this Contract’s requirements.
- C. Approval of Payments – The Project Manager is responsible for approving Applications for Payment. If an Application for Payment is approved by the Project Manager, the Contractor will be paid within 20 business days after the date on which the Application for Payment is stamped as received by the County. The foregoing notwithstanding, the County reserves the right to extend such payment period to the 25 business days permitted under Section 218.735(1)(a), Florida Statutes, in the event the County is requiring that an agent review the Applications for Payment related to this Contract.

The Project Manager's approval of any payment requested in an Application for Payment shall constitute a representation by them to the County that, based on the Project Manager's on-Site observations of the Work in progress and their review of the Application for Payment and the supporting data: the Work has progressed to the point indicated; to the best of their knowledge, information, and belief, 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 their approval); and that the Contractor is entitled to payment of the amount approved.

The foregoing notwithstanding, by approving any such payment, the Project Manager will not thereby be deemed to have represented that they made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work or that they have reviewed the means, methods, techniques, sequences, or procedures of construction, nor is it a representation that they have made any examination to ascertain how or for what purpose the Contractor has used the moneys paid or to be paid to it on account of the Contract Amount.

- D. Rejection of Payments – In accordance with Section 218.735(2), Florida Statutes, if the Application for Payment does not meet the requirements of this Contract, the County will reject such Application for Payment within 20 business days after the date on which the payment request or invoice is stamped as received by the County. Any such rejection shall be provided to the Contractor by the Project Manager in writing and shall indicate the deficiency and the action necessary to make the Application for Payment proper. The Contractor shall then make the necessary corrections and submit a corrected Application for Payment. In the event the Contractor submits a corrected Application for Payment, the County shall either make payment or reject such corrected Application for Payment within 10 business days after the date the corrected Application of Payment is stamped as received by the County.

If the County disputes a portion of an Application for Payment then the County shall reject only the disputed portion and shall pay any remaining undisputed amount in accordance with the timelines established above.

In the event a dispute arises involving any Application for Payment that have been rejected by the Project Manager and that cannot be resolved by submission of a corrected Application for Payment as provided above, the “Contract Claims/Dispute Resolution” provision of this Contract shall be used to resolve such dispute.

- E. Withholding of Payment – The Project Manager may withhold or otherwise refuse to approve any Application for Payment because of subsequently discovered evidence or the results of

subsequent inspections or tests, nullify any such payment previously approved, to such extent as may be necessary in their opinion to protect the County from loss because:

1. The Work is defective;
2. Claims have been filed or there is reasonable evidence indicating the probable filing thereof;
3. The Contract Amount has been reduced because of Change Order(s);
4. The County has been required to correct defective Work or complete the Work in accordance with the article titled "Warranty and Guarantee, Acceptance of Defective Work"; or
5. Of unsatisfactory prosecution of the Work, including failure to clean up as required by the article titled "Contractor's Responsibilities".

In all such cases, the Project Manager shall either file a claim under Section 255.05, Florida Statutes, a written dispute pursuant to the "Contract Claims/Dispute Resolution" provision of this Contract, or both.

- F. Retainage – In accordance with Section 218.375(8), Florida Statutes, all progress payments will be subject to a retainage at the rate of 5% of each progress payment if this Contract exceeds \$200,000 in value.

Accordingly, within the timeframes provided in the "Approval of Payments" provision above, and upon receipt of a proper Application for Payment, the County shall pay 95% of the undisputed portion of the Contract Amount properly allocable to labor, materials, and equipment incorporated in the Work and 95% of the undisputed portion of the Contract Amount properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by each Application for Payment, less the aggregate of previous payments made by the County. When the completion of the Work ascertained as payable exceeds 50% of the total Contract Amount, the Project Manager shall have the sole discretion to reduce the retainage percentage to less than 5%, which shall be done in writing. Any retainage remaining after the County issues a Certificate of Substantial Completion for all the Work shall be dealt with in accordance with the "Final Completion" and "Closeout Obligations" provisions below.

- G. Prompt Payment to Subcontractors – In accordance with Section 218.735(6), Florida Statutes, the Contractor must remit payment due to each of its subcontractors for any labor or services provided or materials furnished in relation to the Project within 10 calendar days after the Contractor's receipt of payment from the County.

Moreover, if a subcontractor receives payment from the Contractor for labor, services, or materials furnished by subcontractors or suppliers hired by that subcontractor, such subcontractor must remit payment due to those subcontractors and suppliers within 7 calendar days after the subcontractor's receipt of payment from the Contractor.

The above requirements do not prohibit the Contractor or any subcontractor from disputing, pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party if the Contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. Notwithstanding the foregoing, the Contractor or subcontractor must pay all undisputed amounts due within the time limits imposed both by this provision and Florida law.

Failure of the Contractor to meet the requirements of this provision, or to enforce the requirements of such provision on its own subcontractors and suppliers, shall be considered a breach of this Contract.

7.51. Completion

- A. Partial Utilization – Prior to Substantial Completion for the Project, the Project Manager may request the Contractor to permit the use of a specified part of the Work which it believes it may use without significant interference with construction of other parts of the Work. If the Contractor agrees, they shall certify to the Project Manager that said part of the Work is Substantially Complete and request that the Project Manager issue a *Certificate of Partial Substantial Completion* that applies to such Work. Within a reasonable time thereafter, the Project Manager and Contractor will make an inspection of that part of the Work to determine its status of completion.

If the County and the Project Manager consider such part of the Work to be Substantially Complete, the Project Manager will deliver to the Contractor a *Certificate of Partial Substantial Completion* specifying which part of the Work it deems to be Substantially Completed. A Tentative Punch List of items that need to be completed or corrected relevant to the portion of Work covered by the *Certificate of Partial Substantial Completion* shall be provided to the Contractor by the County and any items remaining on such list at the time of Substantial Completion for the entire Project will be added to the Final Punch List required under Section 218.375, Florida Statutes, and as further discussed below.

A *Certificate of Partial Substantial Completion* shall not be issued by the Project Manager in cases where a permit, temporary certificate of occupancy, or some other regulatory action is required for the County's authorized use of the portion of Work to be covered by such *Certificate of Partial Substantial Completion* unless such permit, temporary certificate of occupancy, or other such action has been obtained or otherwise fulfilled.

The County shall have the right to exclude the Contractor from the part of the Work for which a *Certificate of Substantial Completion* was issued, but the County will allow the Contractor reasonable access to such part of the Work for the completion of items on the Tentative Punch List.

- B. Substantial Completion – The Contractor shall request that the County inspects the Project for a determination of Substantial Completion. In such request, the Contractor shall certify to the Project Manager that the Project is Substantially Complete. Within a reasonable time thereafter, the Project Manager and the Contractor will inspect the Work to determine the Project's completion status.

During such inspection, the Project Manager and the Contractor shall develop a comprehensive Draft Final Punch List of items required to render complete, satisfactory, and acceptable the construction services purchased by the County through this Contract. If this Contract is for a Project that involves multiple structures, buildings, or phases, a Draft Final Punch List shall be created for each separate element or phase.

Mutual agreement by the parties as to the items (not the estimated costs of such items, which shall be determined as provided below) on any such Draft Final Punch List is a condition precedent to the County's determination that Substantial Completion has been obtained; however, the County reserves the right, to the extent the County deems reasonably necessary to render complete, satisfactory, and acceptable the services purchased by the County, to add additional items to any such Draft Final Punch List at any time prior to the County's delivery of the Final Punch List to the Contractor.

If the Project Manager does not consider the Project to be Substantially Complete, they shall provide written notice to the Contractor which shall contain a detailed explanation as to the deficiencies and what needs to be accomplished prior to a determination of Substantial Completion. Unless an exception is expressly granted in writing by the Project Manager, no *Certificate of Substantial Completion* may be granted unless all outstanding permits related to the Work have been closed and adequate evidence of such has been provided to the Project Manager.

If the Project Manager determines that the Work is Substantially Complete, a *Certificate of Substantial Completion* will be issued to the Contractor. This *Certificate of Substantial Completion* shall fix the date of Substantial Completion of the Project and the responsibilities between the County and the Contractor for maintenance, heat, and utilities.

The County shall have the right to exclude the Contractor from the Work after achievement of Substantial Completion, but the County will allow the Contractor reasonable access to complete items on the Final Punch List.

C. Final Completion -

1. **Final Schedule Update:** The Contractor within 15 calendar days after Substantial Completion shall submit a final update of the schedule with actual start and actual finish dates for all activities and controlling items of Work identified as the critical path. The Final Schedule Update shall be accompanied by a certification signed by the Contractor stating: *“To the best of my knowledge, the enclosed final update of the project schedule reflects the actual start and completion dates of the activities and controlling items of Work on the critical path.”*

2. **Final Punch List** –

a. **Review, Development, and Delivery Timelines:** Within 30 calendar days after the County issues its *Certificate of Substantial Completion*, the County shall develop and review the Final Punch list, and within 5 calendar days thereafter, the County shall deliver such list to the Contractor, which shall include the estimated cost to complete each listed item. The foregoing notwithstanding, if the estimated cost of this Contract exceeds \$10,000,000, the County shall have 45 calendar days after the issuance of the *Certificate of Substantial Completion* to develop and review the Final Punch List and 5 additional calendar days thereafter to deliver such list to the Contractor.

If the County fails to timely deliver the Final Punch List to the Contractor, the Contract Time for Final Completion shall be automatically extended by the number of days the County exceeded the delivery date. Damages may not be assessed against the Contractor in the event the Contractor fails to complete the Project within any extension of time granted due to the County’s failure to timely provide the Final Punch List.

b. **Determination of Estimated Item Costs:** The estimated costs of each item on the Final Punch List shall be determined as followed:

If this Contract is valued at \$200,000 or less, the County and the Contractor may rely upon readily available market data and mutual agreement to develop and determine the estimated cost of each Final Punch List item. If, for some reason, the County and the Contractor cannot come to a mutual agreement as to such estimated costs within 3 business days of the Substantial Completion date, the County shall select and secure the services of a Third-Party Estimator to develop and determine such costs on behalf of the parties.

If this Contract's value exceeds \$200,000, the County shall select and secure the services of a Third-Party Estimator to develop and determine the estimated cost of each Final Punch List item

c. **Third-Party Estimator:** By executing this Contract, the Contractor hereby consents and waives any objection to the County selecting and securing any Third-Party Estimator utilized to develop and determine the estimated cost of each Final Punch List Item in accordance with this Contract at its sole discretion and expense. Any such Third-Party Estimator selected and secured by the County may be the Design Professional for the Project, or a separately secured estimator – which shall either be a qualified firm that provides Construction Engineering and Inspection (“CEI”) Services or a Certified Professional Estimator (“CPE”)

i. In the event such Third-Party Estimator is utilized for the purposes discussed above, the parties hereby agree to the following:

Each party shall be bound by and accept the Third-Party Estimator's finalized cost estimates for each Final Punch List item; and

ii. Neither party shall have the right to appeal the Third-Party Estimator's final cost estimates for each Final Punch List item

The foregoing notwithstanding, the County reserves the right, without assuming any obligation, to accept a “Punch List Estimate Reconsideration Request” from the Contractor. Such request must be submitted to the Project Manager in writing by the Contractor within 3 business days of its receipt of the Final Punch List and provide a detailed explanation as to why the Contractor believes that the Third-Party Estimator's final cost estimates for each specific Final Punch List item to which the Contractor objects should be revised. If the Project Manager, using their sole discretion, believes that the Contractor's request is justified, they may – but are in no way obligated to – submit such request to the Third-Party Estimator for consideration.

By executing this Agreement, the Contractor hereby acknowledges and agrees that any amendments made to the Final Punch List that result from a reconsideration request submitted by the Contractor shall not in any manner change or impact the date upon which the County delivered the Final Punch List to the Contractor. Additionally, the Contractor acknowledges and agrees that any request it submits for reconsideration of the Third-Party Estimator's Final Punch List cost estimates shall waive any right that the Contractor may have: (i) to any extension of the

Contract Time related to the County's timely delivery of the Final Punch List; and (ii) to submit a payment request under Section 218.735(7)(j), Florida Statutes.

- d. **Application for Partial Release of Retainage:** Within 20 business days after providing the Final Punch List to the Contractor, and after receipt of a proper Application for Payment, the County shall pay the Contractor the remaining balance of the Contract, including any remaining retainage withheld by the County, less an amount equal to 150% of the estimated cost to complete all items on the Final Punch List. Such Application for Payment will be processed by the County as provided in the "Applications for Payment" provisions above and, if this Contract required payment and performance bonds, must additionally include a Consent of Surety to Partial Release of Retainage and a valid Power of Attorney for Surety in order to be deemed proper.

The foregoing notwithstanding, the County shall not be required to pay or release any amounts that are subject to good faith dispute made in writing pursuant to this Contract or the subject of a claim brought pursuant to Section 255.05, Florida Statutes, the amount for which the County may hold in addition to 150% of the estimated cost to complete the items on the Final Punch List.

Warranty items and items not included on the Final Punch List cannot be used as a basis to withhold final payment for retainage. Nevertheless, in accordance with Section 255.077(3), Florida Statutes, any failure to include any corrective work or pending items not yet completed on the Final Punch List shall not alter the responsibility of the Contractor to complete all the construction services purchased pursuant to this Contract. Additionally, all items that require correction under this Contract that are identified after the preparation and delivery of the Final Punch List remain the obligation of the Contractor as otherwise provided for in this Contract.

The estimated costs on the Final Punch List shall not in any manner be construed as increasing the Contract Amount or adding any additional payment obligation on the County. Instead, such estimated costs shall be used only for the purpose of calculating the amount of payment that the County may continue to retain or withhold prior to the Contractor's completion of the items on the Final Punch List in accordance with applicable Florida law.

- D. Final Inspection – Upon receiving written certification from the Contractor that the Work is complete, including any "punch listed" items or deficiencies with the exception of the Final Inspection, the Project Manager will, within a reasonable period of time, 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 and to complete all the required work and request reinspection if deemed necessary by the Project Manager.

In order for Final Inspection to be deemed satisfactorily completed by the Project Manager, the following must have been completed:

1. A Physical On-Site inspection by the Project Manager and the Contractor.
2. The Contractor's delivery of all maintenance and operating instructions, schedules, guarantees, Certificates of Inspection, and other closeout documents as required by the Contract Documents, including but not limited to any reports relevant to the County's Minority and Women Owned Business Enterprise Program, if applicable to this Contract.

E. Certificate of Final Completion –

1. **Issuance of Certificate of Final Completion:** If, on the basis of their observations and review of the Work both during construction and their final inspection, the Project Manager is satisfied that the Work has reached Final Completion and the Contractor has fulfilled all of their obligations under the Contract Documents, the Project Manager will issue a *Certificate of Final Completion*. Such *Certificate of Final Completion* shall be issued only after the County has assured itself by tests, inspection, or otherwise, that all of the provisions of the Contract have been carried out by the Contractor to the County's satisfaction. The Project Manager's issuance of the *Certificate of Final Completion* shall constitute an additional representation by them to the County that the conditions precedent to the Contractor's belief being entitled to final payment as set forth in this Article have been fulfilled.

2. **Waiver Of Claims:** The issuance of a *Certificate of Final Completion* shall constitute:

- a. A waiver of all claims by the County against the Contractor other than those arising from unsettled liens, from defective Work discovered after final payment, from failure to comply with the requirements of the Contract Documents regardless of the time of discovery, or from the terms of any special guarantees specified in the Contract Documents; and
- b. A waiver of all claims by the Contractor against the County other than those previously made in writing and still unsettled.

F. Contractor's Continuing Obligation – The Contractor's obligation to perform the Work and complete the Work in accordance with the Contract Documents shall be absolute. At no time shall approval of any payment by the Project Manager, the issuance of *Certificate of Substantial*

Completion, the issuance of a *Certificate of Final Completion*, any payment made by the County to the Contractor under the Contract Documents, any use or occupancy of the Site, the Work, or any part thereof by the County, any act of acceptance by the County, any correction of defective Work by the County, or any other similar action by the County, constitute or be construed as being an acceptance of Work not in accordance with the Contract Documents.

G. Closeout Obligations –

1. **Final Punch List Payment:** If at any point the Project Manager finds that all items on the Final Punch List are completed and that none of the items still delaying their issuance of a *Certificate of Final Completion* are on the Final Punch List, the Contractor may submit an Application for Payment requesting all remaining retainage withheld by the County pursuant to the “Final Punch List” provisions above. For the purposes of this provision, if “Final Inspection” is on the Final Punch List, the Contractor must pass such Final Inspection only as to the completion of all Final Punch List items in order to be able to submit an Application for Payment under this provision.

If a good faith dispute exists as to whether one or more items identified on the Final Punch List have been completed pursuant to this Contract, the County may continue to withhold up to 150% of the total costs to complete such items. The foregoing notwithstanding, the County shall not be required to pay or release any amounts that are subject to either a good faith dispute made in writing pursuant to this Contract or a claim brought pursuant to Section 255.05, Florida Statutes, the associated amounts for which the County may additionally withhold.

The foregoing notwithstanding, if an Application for Payment submitted pursuant to this provision additionally represents Final Payment of all funds retained or withheld by the County, such Application for Payment must additionally comply with those provisions found in the “Application for Final Payment” provision below in order to be a proper Application for Payment that complies with this Contract’s requirements.

2. **Close-Out Documents:** Not later than 20 business days after Final Completion, the Contractor shall submit to the County any and all of the documentation listed above or otherwise required by the Contract or elsewhere in the Contract Documents that it has not yet provided to the County. This requirement includes, in the event the County still has a portion of the Contract Amount retained or withheld, an Application for Final Payment that complies with the provision below, but is not limited to such Application for Final Payment.

Application for Final Payment: When requesting Final Payment, the Contractor shall submit to the Project Manager an Application for Final Payment. Such Application for Final Payment

shall be submitted no later than 20 business days after the Project Manager has issued a *Certificate of Final Completion* and will be processed by the County in the same manner discussed in the "Payment" provision above, with the following additional supporting documents required to be submitted in order for such Application for Final Payment to be proper and compliant with the requirements of this Contract.

If payment and performance bonds were required for this Contract, a legally effective Final Release of Lien from the Contractor, a Consent of Surety to Final Payment, and a valid Power of Attorney for Surety. The *Final Release of Lien Template* located on the County's Forms and Resources website (<https://www.ocfl.net/vfr>) must be utilized.

If payment and performance bonds were not required for this Contract, legally effective partial releases or waivers of liens executed by all Subcontractors that performed services for or supplied materials or equipment to the Contractor for services or supplies. The Project Manager may, using their sole discretion, determine that such releases or waivers of liens by Subcontractors are additionally required for Contracts where payment and performance bonds were required.

Any outstanding documentation and/or reports required by the Contract Documents or as deemed necessary for the County to close out this Contract by the Project Manager, including but not limited to a notarized Asbestos-Free Certification.

Final Payment shall not under any circumstances be considered Final Acceptance or Final Completion, which shall only occur in accordance with the provisions of this Contract and with the County's issuance of a *Certificate of Final Completion*.

7.52. Administrative Data

- A. Progress Payments: Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager the County will make progress payments on account of the Contract Amount to the Contractor as provided in the Contract Documents as follows:

Not later than 30 days following approval of an application for Payment, ninety-five percent (95%) of the portion of the Contract Amount properly allocable to labor, materials and equipment incorporated in the Work and ninety-five percent (95%) of the portion of the Contract Amount properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the application for payment, less the aggregate of previous payments made by the Owner.

When the completion of the Work ascertained as payable exceeds fifty percent (50%) of the total contract amount the retainage percentage withheld may be reduced to less than 5%. Retainage percentage less than 5% shall be determined by the Project Manager and authorized by written Change

Order issued by the County. Upon Final completion of the entire Work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Amount, less such amounts as the Owner shall determine for all incomplete work and unsettled claims as provided in the Contract Documents.

7.53. Anti-Human Trafficking

In accordance with Section 787.06(13), Florida Statutes, Contractor shall attest under penalty of perjury, that Contractor does not use coercion for labor or services as defined in Section 787.06(2), Florida Statutes. Attestations shall be documented using a [Human Trafficking Affidavit](#) as provided by the County. The latest form is accessible on the County's Forms and Resources website (<https://www.ocfl.net/vfr>) or by emailing procurement@ocfl.net.

A [Human Trafficking Affidavit](#) shall be required when (1) executing, (2) renewing, or (3) extending a contract.

8. Bid Response Form (Submittal)

All offers shall be submitted on the County's standard response forms as specified below. Modification of the forms herein or submission on the respondent's quotation forms shall not be accepted and shall be deemed non-responsive.

For upload items, electronic files must be in a common format accessible by software programs the County uses. Those common formats are generally described as Microsoft Word (.doc or .docx), Microsoft Excel (.xls or .xlsx), Microsoft Power Point (.ppt or pptx), or Adobe Portable Document Format (.pdf.). Respondents will not secure, password protect or lock uploaded files; the County must be able to open and view the contents of the file. Respondents will not disable or restrict the ability of the County to print the contents of an uploaded file. Scanned documents or images must be of sufficient quality, no less than 150 dpi, to allow for reading or interpreting the words, drawings, images or sketches.

8.1. QUALIFICATION

8.1.1. *Reference Requirements**

Please download the below documents, complete, and upload.

Respondent shall supply a list of at least three (3) similar projects successfully completed by the Respondent, as a Prime Contractor or Sub-Contractor within the last ten (10) years, immediately preceding the due date of bids for this Invitation for Bids. Failure to provide this information may be cause for rejection of the response.

- **Each Similar project submitted shall consist of at least 2 of the following elements:**Elements:1. Demolish existing chillers, pumps, expansion tank, and air separator 2. Install new single chiller, pumps, expansion tank, and air separator
3. Replace existing automatic circuit setters with manual balancing valves
4. Perform TAB and commissioning on new and existing-to-remain water-side equipment**OR**Complete HVAC installations (material and labor) in large commercial buildings such as (schools, hotels, grocery stores) may be considered in lieu of demonstrating 2 elements in a similar project if the project budget was in excess of \$5,000,000.
- **Additionally, at least one of the projects submitted must meet the following requirements:**
At least one similar project must have been in an occupied building.
- [Reference Form.xlsx](#)

*Response required

8.1.2. *Completion Requirements**

If awarded this construction contract, the Respondent agrees to complete the work covered by this Contract as follows:

- A. Work shall start at the project site within fourteen (14) days of the effective date of the Notice to Proceed.
- B. Substantially complete in one hundred and fifty (150) **consecutive calendar days** from date of Official Notice to Proceed.
- C. Final completion in one hundred and eighty (180) **consecutive calendar days** from date of Official Notice to Proceed.

Please confirm

*Response required

8.1.3. Licenses*

In accordance with [#Solicitation Terms and Conditions](#), Respondent shall upload copies of all applicable licenses and certifications required to lawfully perform the proposed work.

*Response required

8.2. CONTRACT COMPLIANCE

8.2.1. Contract Compliance Packet*

Please download the below documents, complete and have notarized. An online notarization option will be provided for you when responding. Failure to provide complete contract compliance documentation may result in disqualification.

- [Contract Compliance Invitat...](#)

*Response required

8.2.2. Non-Collusion Certification*

The respondent nor any other person, firm or corporation nor anyone else to the knowledge of the undersigned, have themselves solicited or employed anyone else to solicit favorable action for this solicitation by the County, also that no head of any department or employee therein, or any officer of Orange County, Florida is directly interested therein.

This offer is genuine and not collusive or a sham; the respondent has not colluded, conspired, connived or agreed directly or indirectly with any other respondent, person, firm or corporation, to put in a sham offer, or compel such other person, firm or corporation, to refrain from making an offer.

The Respondent has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the prices of this offer or the offer of any other respondent.

Please confirm

*Response required

8.2.3. Drug Free Workplace Certification*

Respondent certifies the firm has implemented a drug free workplace program which complies with [Florida Statute 287.087](#) and the [Orange County Ordinance Sec. 17-310](#). Failure to confirm shall deem this offer non-responsive.

Please confirm

*Response required

8.2.4. *E-Verify Certification**

The Respondent acknowledges the use of the E-Verify system for newly hired employees is an ongoing obligation for so long as the contractor provides labor under the contract and that the workforce eligibility of all newly hired employees will be properly verified using the E-Verify system.

In accordance with Section 837.06, Florida Statutes, Contractor acknowledges that whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duties shall be guilty of a misdemeanor in the second degree, punishable as provided in Section 775.082 or Section 775.083, Florida Statutes.

In addition, the respondent certifies the contractor:
(SELECT ONE)

Is, or will be, registered with and using the E-Verify system prior to execution of the contract with Orange County.

Is, or will be, registered with the E-Verify system prior to execution of the contract with Orange County, but does not have any employees and does not intend to hire any new employees during the period of time that the contractor will be providing services under the contract.

Is, or will be, registered with the E-Verify system prior to execution of the contract with Orange County, but employs individuals who were hired prior to the commencement of providing labor on the contract and does not intend to hire any new employees during the period of time that the contractor will be providing labor under the contract.

*Response required

8.2.5. *Conflict of Interest Statement**

Respondent shall disclose all material facts pertaining to potential conflicts of interest due to any other clients, contracts, or property interest for this project.

Select "No" for no conflicts of interest

Select "Yes" to disclose potential conflicts of interest

Note: Respondents indicating "Yes" will be required to submit additional documentation as part of this response. Failure to provide documentation of a possible conflict of interest may result in disqualification.

Yes

No

*Response required

When equals "Yes"

8.2.6. Conflict of Interest Statement (Attachment)*

The respondent, by attachment to this response, shall submit all information which may be a potential conflict of interest due to other clients, contracts, or property interest for this project.

The statement may be in the form of a memo, table or narrative format in Portable Document Format (pdf).

*Response required

8.2.7. Statement of Felony Convictions and/or Charges*

Respondent shall disclose all material facts pertaining to any felony indictments or convictions in the last ten (10) years, or any pending felony charges, anywhere in the United States, against: 1) Respondent, 2) any business entity related to or affiliated with Respondent, or 3) any present or former executive employee, senior management, key employee, officer, director, stockholder, partner or owner of Respondent or of any such related or affiliated entity. This Disclosure shall not apply to any person or entity who is, or was, solely a stockholder, owning less than 5% of the outstanding shares of a Respondent whose stock is publicly owned and traded.

Select "No" to indicate no felony convictions and/or charges during the time period specified above.

Select "Yes" to disclose felony convictions and/or charges

Note: Respondents indicating "Yes" will be required to submit additional documentation as part of this response. Failure to provide documentation of felony convictions and/or charges may result in disqualification.

Yes

No

*Response required

When equals "Yes"

8.2.8. Statement of Felony Convictions and/or Charges (Attachment)*

The respondent, by attachment to this response, submits a summary of all material facts pertaining to any felony indictments or convictions or any pending felony charges, anywhere in the United States during the last ten (10) years.

The statement may be in the form of a memo, table or narrative format in Portable Document Format (pdf).

*Response required

8.2.9. Statement of Local, State or Federal Entity Litigation*

Respondent shall disclose a summary of past litigation and/or judgments entered against it by any local, state or federal entities for the past ten (10) years. Additionally, the Respondent shall disclose any litigation and/or judgments entered against such entities for the same time period.

Select "No" to indicate no Local, State or Federal entity litigation during the time period specified above.

Select "Yes" to disclose Local, State or Federal Entity Litigation

Note: Respondents indicating "Yes" will be required to submit additional documentation as part of this response. Failure to provide documentation of Local, State or Federal entity litigation may result in disqualification.

Yes

No

*Response required

When equals "Yes"

8.2.10. [Statement of Local, State or Federal Entity Litigation \(Attachment\)*](#)

The respondent, by attachment to this response, submits a summary and disposition of individual cases of litigation and/or judgments entered by or against any local, state or federal entity, by any state or federal court, during the last ten (10) years.

The statement may be in the form of a memo, table or narrative format in Portable Document Format (pdf).

*Response required

8.2.11. [Statement of Civil Conviction and/or Civil Litigation *](#)

Respondent shall disclose all material facts pertaining to any civil citations, infractions, or convictions for any reason, or any civil litigation, administrative proceeding, or notice of default during the last ten (10) years, anywhere in the United States, in which Respondent or any business controlled by or affiliated with Respondent is, or was, a party.

Select "No" to indicate no civil convictions or civil litigation during the time period specified above.

Select "Yes" to disclose civil convictions or civil litigation.

Note: Respondents indicating "Yes" will be required to submit additional documentation as part of this response. Failure to provide documentation of civil convictions or civil litigation may result in disqualification.

Yes

No

*Response required

When equals "Yes"

8.2.12. [Statement of Civil Conviction and/or Civil Litigation \(Attachment\)*](#)

The respondent, by attachment to this response, submits a summary and disposition of civil convictions and/or civil litigation during the last ten (10) years.

The statement may be in the form of a memo, table or narrative format in Portable Document Format (pdf).

*Response required

8.2.13. [Anti-Human Trafficking*](#)

In accordance with [#Solicitation Terms and Conditions](#), Respondent shall confirm they do not engage in or permit the use of coercion for labor or services as defined in Section 787.06(2), Florida Statutes.

By submitting an offer in response to this solicitation, the respondent acknowledges that, if recommended for award, the timely execution of a Human Trafficking Affidavit is a condition of the contract.

Failure to confirm shall deem the offer non-responsive.

Please confirm

*Response required

8.2.14. [Other Forms \(if applicable\)](#)

If none of the below are applicable leave this area blank

Upload the following forms **only if applicable**:

- [Information for Determining Joint Venture Eligibility Form](#)
 - *In addition to the form, attach the associated, fully executed, Joint Venture Agreements*
 - *Refer to [#Solicitation Terms and Conditions](#), Joint Venture Requirements*
- [Trench Safety Act Form](#)
 - *Refer to [#Solicitation Terms and Conditions](#), Trench Safety Act*
- [Trade Secret Information Log](#)
 - *In addition to the form, attach the associated redacted copies of all impacted submittals*
 - *Refer to [#Solicitation Terms and Conditions](#), Trade Secret Information*

8.3. [BOND REQUIREMENTS](#)

Upload Applicable Items.

8.3.1. [Statement of Compliance with Surety Requirements*](#)

Respondents indicating "**BID BOND**" below shall utilize the "**Electronic Bid Bond**" section of this portal to submit their documentation.

Failure to provide a valid surety instrument shall result in disqualification.

The required [Bid Bond Template](#) is provided on the County's Forms and Resources website (<https://www.ocfl.net/vfr>).

Respondents are cautioned to refrain from editing the Bid Bond Template structure and requirements, any such deviations shall result in rejection of the bid.

For additional information see: [#Bond Requirements](#) and [#Submittal Instructions & Solicitation Terms](#) .

BID BOND: Attached hereto is a bid bond, along with a certified and effectively dated copy of the power of attorney, these documents have been completed and signed by all required parties and have been submitted on the County's required Bid Bond Template.

ALTERNATIVE SURETY: Respondent acknowledges that submittal of a Certified Check, or a Cashier's Check, is required to be received at the Procurement Division by the stated deadline. Failure to submit alternative surety shall disqualify this electronic offer.

NOT REQUIRED: This offer is under the \$100,000 requirement for bonds.

*Response required

8.3.2. [Electronic Bid Bond](#)

Use this feature to **upload requirements**:

- Electronic Bid Bond with a certified and effectively dated copy of the Power of Attorney (required unless using alternative surety). Respondents shall ensure the County's required [Bid Bond Template](#) is utilized.

Note: Offers exceeding \$100,000 are required to comply with this requirement, failure to submit a bid bond shall deem the offer non-responsive.

If offer is less than \$100,000 you may leave this area blank

8.4. [SUB-CONTRACTING AND BUSINESS DEVELOPMENT](#)

8.4.1. [Equal Employment Opportunity*](#)

Record the demographics of your workforce.

Complete and upload the following:

- [Equal Employment Opportunity Workforce Schedule](#)

The [Equal Employment Opportunity Workforce Schedule](#) can be found at on the County's Forms and Resources website (<https://www.ocfl.net/vfr>).

*Response required

8.4.2. [Sub-Contracting with Minority and Women Owned Business Entities \(M/WBE\) Goal Requirements*](#)

All Respondents are required to meet the following requirements **A and/or B:**

- A. Comply with M/WBE subcontracting goals established by the County Minority/Women Business Enterprise Ordinance, No. 94-02 and amended by Ordinance No.2009-21.

The Goal for this Procurement is 25% (twenty-five percent).

Complete and upload the following:

[Contract and Sub-Contract Goal Participation Schedule](#)

- B. Respondents unable to fully comply with requirement A above (any submittal with M/WBE participation less than 25% (twenty-five percent)) shall submit the following additional documentation to successfully demonstrate Good Faith Effort or qualified exception, or they shall be deemed non-responsive by the Procurement Manager.

Complete and upload the following:

[Good Faith Effort Form](#) and applicable attachments

Submittal must include applicable documentation/evidence.

The [Contract and Sub-Contract Goal Participation Schedule](#) and [Good Faith Effort Form](#) can be found at on the County's Forms and Resources website (<https://www.ocfl.net/vfr>).

Note: Effective August 11, 2020, the Board of County Commissioners approved a change to the M/WBE Ordinance, removing the sliding scale from all construction formal solicitation opportunities.

*Response required

8.4.3. Orange County Minority and Women Owned Business Entity Ordinance Information*

By submission of a bid I am confirming the following:

- The Minority and Women Owned Business Entity goal for this procurement is 25% (twenty-five percent).
- Failure to either meet the above goal or document good-faith effort shall deem my bid as non-responsive.
- I have been provided resources to assist with participation goals
<https://ocfl.diversitycompliance.com/FrontEnd/searchcertifieddirectory.asp?TN=ocfl>
- All listed sub-contractors and suppliers have been advised of the scope and dollar values attributed to them on this form.
- If recommended for award, the timely submission of sub-agreements (if applicable) will be required to demonstrate program compliance prior to contract execution.

Please confirm

*Response required

8.5. SOLICITATION CHECKLIST

8.5.1. *Acknowledgment of Addenda and Q&A**

Respondent acknowledges that they are solely responsible for reviewing the latest questions and answer, notices and addenda associated with this procurement process. Failure to consider key information and changes within your submission may result in your offer being deemed non-responsive if key data or forms are omitted.

Please confirm

*Response required

8.5.2. *Quality Assurance for File Uploads**

Respondent acknowledges that they are solely responsible for reviewing their submission to ensure all files and attached documents uploaded are uncorrupted. Failure to perform quality assurance on this submission may result in the offer being deemed non-responsive if key data is omitted or inaccessible.

Please confirm

*Response required

8.5.3. *Bid Additives**

As part of this bid submittal the County is seeking pricing on bid additives and/or deductive. To this end, you are instructed as follows:

Complete all required

Please confirm

*Response required

9. Fee Schedule

In the event of extension error(s), the unit price will prevail and the Bidder's total offer will be corrected accordingly. Bidders must check their bid where applicable. Failure to do so will be at the Bidder's risk.

Y25-711 FEE SCHEDULE

Lump Sum Base Bid for the proper execution and completion of: Barnett Park New 100 Ton Chill in full accordance with the drawings and specifications prepared in accordance with the Contract Documents and, if awarded the Contract, to complete the said work within the time limits specified.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Lump Sum Base Bid for IFB Y25-711, Parks Barnett Park New 100 Ton Redundant Chillers	1	LS		
TOTAL					

10. Required Contract

ONCE AN AWARD IS AUTHORIZED BY THE COUNTY THE SELECTED RESPONDENT SHALL RECIEVE 10 DAYS NOTICE TO EXECUTE THE FOLLOWING REQUIRED CONTRACT

(NOTE: This is an online representation of the Required Contract Document, the Final Contract may have some minor variances in formatting and enumeration only)



**PROCUREMENT DIVISION
400 E. SOUTH STREET | 2ND FLOOR | ORLANDO, FLORIDA 32801**

**Contract No.Y25-711
Parks Barnett Park New 100 Ton Redundant Chiller**

10.1. CONTRACT:

Made between Orange County, Florida (hereinafter called COUNTY), represented by the Manager of the Procurement Division, or their authorized delegate, executing this Contract, and _____ (Name of Contractor), _____ (Federal Identification Number).

Work to commence within fourteen (14) days of Official Notice to Proceed date and shall be completed, unless amended by written Change Order or Amendment executed by both parties to this Contract.

Substantial Completion of the Work shall be achieved not later than:

_____ (date) and;

Final Completion of the Work shall be achieved not later than:

_____ (date).

10.2. AMOUNT OF CONTRACT

The County shall pay the Contractor in current funds, and in accordance with the progress payment schedule as stated herein, for the performance of the work, subject to additions and deductions by Change Order as provided in the Contract Documents, the estimated amount of :

(Dollar Amount in Numbers) (Dollar Amount in Words)

The Contractor shall provide written notification to the County's Project Manager when 90% of the total contract amount has been reached. The Contractor shall not proceed beyond 100% of the total contract amount unless duly authorized by a written change order.

10.3. CONTRACT DOCUMENTS

The following documents are hereby incorporated into this contract.

The order of precedence of items and documents is as follows:

1. Construction Contract
2. Permits
3. Solicitation addenda and written question/answers issued
4. Federal Terms and Conditions (if applicable)
5. Supplemental Terms and Conditions (if applicable)
6. Special Terms and Conditions
7. Contract Terms and Conditions
8. Bond Requirements
9. Insurance Requirements
10. Business Development Requirements (if applicable)
11. Specifications/Technical Provisions
12. Drawings/Plans
13. Road Design, Structures, and Traffic Operations Standards (If applicable)
14. Florida Department of Transportation Standard Specifications for Road and Bridge Construction (If applicable)
15. Submittal Instructions and Solicitation Terms
16. Contractor's Bid Proposal

10.4. COMPLIANCE WITH M/WBE CONTRACT REQUIREMENTS

By entering into this Contract, the Contractor affirmatively commits to comply with the M/WBE subcontracting requirements submitted with their bid. The failure of the Contractor to comply with this commitment during the Contract's performance period may be considered a breach of Contract.

The County may take action up to and including termination for default if this condition is not remedied within the time period specified by the Manager, Procurement Division.

10.5. INVOICING

Invoices against this Contract are authorized only at the prices stated in your bid response, unless otherwise provided in the Invitation for Bid.

Invoices must be submitted, in duplicate, referencing this Contract number and the applicable Delivery Order / Purchase Order number to:

Administrative Services Fiscal and Operational Support
400 East South Street, 5th Floor
Orlando, FL 32801

10.6. Anti-Human Trafficking

As a condition of this contract, Contractor shall attest under penalty of perjury, that Contractor does not use coercion for labor or services as defined in Section 787.06(2), Florida Statutes. Attestations shall be documented using a [Human Trafficking Affidavit](#) as provided by the County. The latest form is accessible on the County's Forms and Resources website (<https://www.ocfl.net/vfr>) or by emailing procurement@ocfl.net.

Contractor understands and affirms that Section 787.06(2), Florida Statutes, defines “coercion”, “labor”, and “services” as follows:

- **“Coercion”** means: **(1)** using or threatening to use physical force against any person; **(2)** restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; **(3)** using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; **(4)** destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; **(5)** causing or threatening to cause financial harm to any person; **(6)** enticing or luring any person by fraud or deceit; or **(7)** providing a controlled substance as outlined in Schedule I or Schedule II of Section [893.03](#), Florida Statutes, to any person for the purpose of exploitation of that person.
- **“Labor”** means work of economic or financial value.
- **“Services”** means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.

Contractor understands and affirms that Section 787.06(13), Florida Statutes, prohibits Orange County from executing, renewing, or extending a contract with an entity that uses coercion for labor or services.

10.7. CONTRACT EXECUTION

County and Contractor each binds themselves, their partners, successors, assigns and legal representatives to the other party hereto, their partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

Counterparts. This Agreement may be executed in two identical counterparts, all of which shall be considered one and the same agreement and shall become effective when both counterparts have been signed by each party and delivered to the other party.

10.8. COUNTERPART (1)

(Name of Contractor)

BY: _____ (Authorized Signatory)

_____ (Name)

_____ (Title)

DATE: _____

NOTICES:

_____ (Contact)

_____ (Address)

_____ (City, State Zip)

_____ (Phone)

_____ (Email)

10.9. COUNTERPART (2)

Orange County's Acceptance of Bidder's Offer and Contract Award

ORANGE COUNTY, FLORIDA

BY: _____ (Authorized Signatory)

_____ (Name)

_____ (Title)

DATE: _____

undefined #Y25-711

Title: Parks Barnett Park New 100 Ton Redundant Chiller

NOTICES:

PROCUREMENT DIVISION
INTERNAL OPERATIONS CENTRE II
400 EAST SOUTH STREET, 2ND FLOOR
ORLANDO, FLORIDA 32801

(407) 836- 5635

EMAIL:PROCUREMENT@OCFL.NET