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AMENDMENT TO AGREEMENT BETWEEN COUNTY AND CONTRACTOR RFB2021-3337

THIS AMENDMENT #1 made and entered into this 12th day of December in the year 2023, by and between **MARTIN COUNTY**, a political subdivision of Florida, (Hereinafter "County"), 2401 SE Monterey Road, Stuart, FL 34996 and **FERREIRA CONSTRUCTION SOUTHERN DIVISION CO., INC.** (Hereinafter "Contractor"), 13000 SE Flora Avenue, Hobe Sound, FL 33455.

WITNESSETH

WHEREAS, the **County** and **Contractor** entered into an Agreement for MARINE CONTRACTING on August 10th, 2021; and

WHEREAS, the **County** and **Contractor** desire to amend the Agreement to increase the Contract not-to-exceed (NTE) value by $750,000.00 (from $2,500,000.00 to $3,250,000.00).

NOW THEREFORE, in consideration of the promises, covenants, and mutual benefits which all accrue to the parties hereto in carrying out the terms of this Agreement, it is mutually covenanted and agreed that the contract will be amended as follows:

1. Increase the Contract NTE value by $750,000.00 for an amended not-to-exceed total Contract value of $3,250,000.00.

2. All remaining pricing, terms and conditions of the Agreement not specifically amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Agreement as of the date first set forth above.

REVIEWED BY

Kevin Abbate / Todd Foust
Parks & Recreation Director

BOARD OF COUNTY COMMISSIONERS MARTIN COUNTY, FLORIDA

George Stokus
Assistant County Administrator

FERREIRA CONSTRUCTION SOUTHERN DIVISION CO., INC.

John Ciabattari
Vice President

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Sarah W. Woods
County Attorney

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AGREEMENT BETWEEN COUNTY AND CONTRACTOR FOR CONSTRUCTION SERVICES

THIS AGREEMENT, effective this 10th day of August in the year, 2021, between:

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

AND the CONTRACTOR: (hereinafter CONTRACTOR)	Ferreira Construction Southern Division Co., Inc. 13000 SE Flora Avenue Hobe Sound, Florida 33455
Contract Name:	Marine Contracting
Contract Number:	RFB2021-3337
Not to Exceed Amount:	$2,500,000.00 (to all vendors combined over maximum 5 years)
Contract Term:	Three (3) years plus two (2) 1-year renewal options Not to exceed 5 years

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ARTICLE 1
DEFINITIONS

1.1 *Defined Terms*

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

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

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

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

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

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

6. *Claim.* Any action, assertion, change order, demand, invoice, lawsuit, or request by COUNTY or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money, property, or services made to any agent, employee, or officer of the County by a third party is not a Claim. Claim does not include tort claims as that term is used in Section 768.28(5), Fla. Stat. as amended from time to time.

7. *Contract Documents.* The Contract Documents establish the rights and obligations of the parties and include the following: Agreement (including Exhibits), Work Order, entire bid package including Advertisement, all Addenda and Instructions to Bidders, CONTRACTOR'S completed Bid Form package, Notice of Award, Notice to Proceed, drawings, specifications, plans, data, studies, surveys, calculations, permit applications, estimates, photographs, reports, approved submittals, and other documents prepared by, through, or under CONTRACTOR that fix, depict and/or describe the size, quality and character of the Project, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Engineer's written interpretations and

clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

8. *Contract Price.* The moneys paid to CONTRACTOR under Contract Documents.

9. *Contract Time.* The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

10. *Day*. A calendar day unless noted otherwise.

11. *CONTRACTOR.* The individual or entity with whom COUNTY has entered into the Agreement."

12. *Drawings.* That part of the Contract Documents prepared or approved by an Engineer which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

13. *Effective Date of the Agreement.* The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

14. *Field Order*. A written order issued by the Engineer or COUNTY which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

15. *Final Completion or Final Acceptance.* The completion of all Work called for under the Contract Documents, including, but not limited to, satisfactory operation of all equipment (other than COUNTY supplied equipment or facilities or those installed by separate CONTRACTORS); correction of all punch list items to the satisfaction of COUNTY, payment of all trade CONTRACTORS, subcontractors, and materialmen; settlement of all claims, if any; payment and release of all mechanic's, materialmen's, and similar liens; delivery of all guarantees, equipment operation and maintenance manuals, as-built drawings, building certificates, electrical certificates, mechanical certificates, plumbing certificates, and all other required approvals and acceptances by any municipality within Martin County, Martin County itself, the State of Florida or other authorities or agencies having jurisdiction; and removal of all rubbish, tools, scaffolding, and surplus materials and equipment from the Work site.

16. *Notice to Proceed.* A written notice given by COUNTY to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

17. *Public Record.* All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business between the COUNTY and the CONTRACTOR.

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

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

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

21. *Substantial Completion.* For the purpose of this Agreement, and for the compliance of those procedures, duties and obligations as set forth in the Florida Statutes' "Local Government Prompt Payment Act", the term "Substantial Completion" is defined as that point where the COUNTY is able to enjoy beneficial occupancy of the Work and where the Work has achieved that level of completion such that the COUNTY is able to utilize the entire the Project for its intended purposes, including but not limited to the completion of all specified systems and items relating to life, safety and regulatory use, with the exception of incidental or incomplete items except where a lack of completion of such incidental or incomplete items of the Work will adversely affect the complete operation of other areas of the Work. Additional conditions (if any) needed to achieve Substantial Completion of the Work and which are project specific as set forth in the Exhibits (if any). The Project should be completed to the point that the Work can be utilized for the purposes for which it was intended, as well as the satisfaction of the following requirements: (A) the items that affect operational integrity and function of the Project must be capable of continuous use; (B) all permits and other regulatory requirements must be satisfied; and (C) where required, a Certificate of Occupancy must be issued.

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

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

24. *Work.* Services as defined in each individual Work Order to be paid for in accordance with the unit prices indicated in CONTRACTOR's bid.

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

26. *Year*. The word "year" means 365 calendar days, including leap days if any.

ARTICLE 2
WORK/PRELIMINARY REQUIREMENTS

2.1 The CONTRACTOR agrees to furnish and complete all authorized and approved work, materials, supplies, tools, furnishings, fixtures, labor, services, equipment, site development, permitting, regulatory matters, environmental mitigation, traffic control, accounting, coordination, and construction of the Project,

more specifically described in the Design Documents, as applicable.

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

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

a. A description of the specific Services to be performed, a schedule and amount of compensation to be paid with sufficient detail so as to identify all of the various elements of costs such as, labor rates by classification, hours for each classification, extended price, subcontracted labor (also broken out), material, other direct costs, overhead rate, indirect rate, and profit/fee. The sufficiency of such budget detail is subject to the approval of the COUNTY; and

b. Any other additional instructions or provisions relating to the specific Services authorized pursuant to each Work Order that do not conflict with the terms of this Agreement.

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

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

2.6 Requirement to E-Verify. ***As a condition precedent to entering into this AGREEMENT***, and in compliance with Section 448.095, Fla. Stat., Contractor and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.

A. Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this AGREEMENT.

B. The COUNTY, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat., or the provisions of this section shall terminate the contract with the person or entity.

C. The COUNTY, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.

D. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the COUNTY for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the COUNTY as a result of termination of any contract for a violation of this section.

E. *Subcontracts.* Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

ARTICLE 3
CONTRACT PRICE; TERM

3,1 The OWNER shall pay the CONTRACTOR for the performance of Work outlined in each individual Work Order issued in accordance with the Contract Documents, the fixed Contract Price outlined in each individual Work Order, based on the unit costs in the Bid. The obligations of the OWNER under this Agreement are subject to the availability of funds lawfully appropriated for the Project by the Board of County Commissioners of Martin County.

3,2 Term. This Agreement shall be in effect from the effective date listed on page 1 of this Agreement. The Contract Term, as stated on page 1 of this Agreement, is for three years.

3.3 The Two 1-Year Renewal Options. As stated on page 1 of this Agreement, there are two 1-year renewal options. Specifically, the COUNTY may, or may not, ***in its sole discretion***, exercise the option of renewing this Agreement for one additional year on or before the end of the Contract Term, and if the County exercises its option of renewing this Agreement for one additional year, at or before the expiration of the additional year, the COUNTY may, or may not, in its sole discretion, exercise the option of renewing this Agreement for another year. Nothing herein shall be construed to mean CONTRACTOR is entitled or has a legal right to a renewal. This Agreement shall expire on the last day of the Contract Term or after the first or second additional year as applicable.

ARTICLE 4
CONTRACTOR RESPONSIBILITIES

4.1 CONTRACTOR represents that it has familiarized itself with, and assumes full responsibility for having familiarized itself with, the nature and extent of the Contract Documents, specifications set forth in each Work Order, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that it has correlated its study and observations with the requirements of the Contract Documents. CONTRACTOR

also represents that it has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Specifications and made such additional surveys and investigations as it deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that it has correlated the results of all such data with the requirements of the Contract Documents.

4.2 The CONTRACTOR shall give all notices and comply with all municipal, local, state and federal laws, ordinances, codes, rules, licenses, and regulations applicable to the Work. If the CONTRACTOR observes that any of the AGREEMENT is contradictory to such laws, rules, and regulations, it shall notify the Project Manager promptly in writing. If the CONTRACTOR performs any Work that it knows or should have known to be contrary to such laws, ordinances, rules, and regulations, it shall bear all related costs.

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

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

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

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

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

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

4.9 The CONTRACTOR shall employ and maintain a full-time on-site Superintendent who shall have been designated in writing by the CONTRACTOR and pre-approved by the COUNTY. The Superintendent shall be dedicated to this the Project full time and shall have full authority to act on behalf of the CONTRACTOR. The superintendent shall be capable of properly interpreting the Contract Documents and be thoroughly experienced in the type of work being performed. The Superintendent shall have full authority to receive instructions from the Engineer and to execute the orders or directions of the Engineer, including promptly supplying any materials, tools, equipment, labor, and incidentals that may be required. A Superintendent shall be provided regardless of the amount of work sublet. The Superintendent shall speak and understand English, and the CONTRACTOR shall maintain at least one other responsible person who speaks and understands English, on the project during all working hours. All communications given to the Superintendent shall be as binding as if given to the CONTRACTOR. Copies of written communications given to the Superintendent of the CONTRACTOR shall be mailed to the address set forth

in the Agreement for notices. Nothing contained herein shall be construed as modifying the CONTRACTOR's duty of supervision and fiscal management as provided by Florida law. The COUNTY shall have the right of direct removal of any Superintendent of the CONTRACTOR. Any change in the Superintendent of the CONTRACTOR assigned to the Project shall be subject to the COUNTY's prior written approval. The Superintendent shall have full authority to receive instructions from the Owner and/or Engineer, and to execute the orders or directions of the Owner and/or Engineer, including promptly supplying any materials, tools, equipment, labor, and incidentals that may be required. The Superintendent shall provide such superintendence regardless of the amount of work sublet.

4.10 The CONTRACTOR shall perform at least 30% (thirty percent) of the total amount of the Work in-house. The foregoing 30% (thirty percent) is exclusive of general conditions and material ordered for work performed by sublets.

4.11 The CONTRACTOR shall not employ any subcontractor or consultant against whom the COUNTY may have reasonable objection in the County's sole discretion.

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

4.13 The CONTRACTOR shall keep on-site one record copy of all Drawings, Specifications, Addenda, Modifications, and Shop Drawings that is annotated to show all changes made during the construction process. Final acceptance of the Work will be withheld until all such modifications have been properly inserted electronically into the design documents, thus creating Record Drawings, and the Record Drawings are accepted by the COUNTY.

[OPTIONAL: The CONTRACTOR shall provide the COUNTY two copies of the Record Drawings verifying the as-built conditions for all installed and constructed components of the Work, including, but not limited to, the surface water management, traffic control, lighting, water distribution, and wastewater collection systems. The Record Drawings, which shall be signed and sealed by a Professional Engineer or Surveyor and Mapper, licensed in the State of Florida, must demonstrate to the Project Manager that the Project components were constructed in substantial conformance with the approved Construction Plans and applicable permits and that the Project will function as designed and intended. The Record Drawings must be certified based on an As-Built Survey prepared in accordance with the Minimum Technical Standards established in Florida Administrative Code (FAC) 5J-17.051 and 5J-17.052. If the Project Manager determines that the as-built conditions of one or more components are not constructed in substantial conformance with the approved Construction Plans or that the Record Drawings do not sufficiently demonstrate conformance with the Construction Plans, one set of the Record Drawings will be returned to the CONTRACTOR that identify the deficient component(s) of the Work. The CONTRACTOR shall correct the component(s) or the Record Drawing in the timeframes set forth in Article 6 of this Agreement. Upon acceptance by the Project Manager, the CONTRACTOR shall provide the COUNTY with _____ copies of the Record Drawings electronically in AutoCAD® and Adobe Acrobat®. The Adobe Acrobat® file shall be a replica of the signed and sealed Record Drawing.]

4.14 The CONTRACTOR shall, at its expense, attend any and all meetings called by COUNTY to discuss

the Work under the Contract.

4.15 CONTRACTOR shall deliver to the COUNTY both prior to commencing each Work Order and also at the completion of the Project and before receipt of Final Payment, a DVD video of the Project showing the site before Work is commenced, and the site as it progresses on a monthly basis. CONTRACTOR shall identify on the DVD the station numbers as those areas of the Project are taped, as well as the date recorded. The cost of the recording is included in the bid submitted by the CONTRACTOR.

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

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

4.18 Maintenance of Traffic. The CONTRACTOR shall be responsible for the proper control, maintenance, and detour of traffic in the construction area, at all times during the course of the Work. Contractor shall provide and maintain Maintenance of Traffic (MOT) by a certified Advanced Work Zone Traffic Control officer. All traffic control and maintenance procedures shall be in accordance with the requirements of the Florida Department of Transportation, Martin County, or the local municipality, within their respective area of jurisdiction. It shall be the CONTRACTOR’s responsibility, as Bidder, prior to submitting its Bid, to determine the requirements of these agencies so that its Bid reflects all costs to be incurred. No claims for additional payment will be considered for costs incurred in the proper control, maintenance, detour of traffic. The CONTRACTOR shall notify all such agencies and the COUNTY at least 7 (seven) days in advance of any traffic detour. No road closures will be permitted unless approved by the COUNTY. The CONTRACTOR shall notify all such agencies and the COUNTY at least 14 (fourteen) days in advance of any road closure.

4.19 The CONTRACTOR is responsible for adequate NPDES-compliant drainage at all times. Existing functioning storm sewers, gutters, ditches, and other run-off facilities shall not be obstructed. Stabilization measures, as defined by the State of Florida Department of Environmental Protection Generic Permit For Stormwater Discharge from Large and Small Construction Activities, as amended, shall be initiated as soon as practicable, but in no case more than 7 days, in portions of the site where construction activities have temporarily or permanently ceased.

4.20 The CONTRACTOR shall ensure that all fire hydrants on or adjacent to the Project shall be kept accessible and no obstruction shall be placed within fifteen feet of any hydrant.

4.21 The CONTRACTOR shall ensure that heavy equipment is not operated close enough to COUNTY assets or other structures to cause their displacement.

4.22 CONTRACTOR certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, Fla. Stat. In addition, CONTRACTOR agrees to observe the requirements of Section 287.135, Fla. Stat., for applicable sub-agreements entered into for the performance of Work under this Agreement.

ARTICLE 5
PAYMENT

5.1 A Schedule of Values shall be approved by the COUNTY prior to the commencement of the Work. The approved Schedule of Values will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the COUNTY. Progress payments on account of Unit Price Work will be based on the number of units completed.

5.2 Applications for Payments

A. The CONTRACTOR shall submit to the COUNTY for review, an Application for Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as required by the Contract Documents. Such supporting documents shall include but not be limited to: (i) a current release from the CONTRACTOR releasing all claims, other than those previously submitted pursuant to Article 10 herein, through the date of the Application for Payment; and (ii) a monthly dated Critical Path Method (CPM) Schedule for the Project. Written consent from the surety in a form acceptable to the County regarding the project or payment may be given in lieu of waivers. Submission of this supporting documentation shall be a condition precedent to the CONTRACTOR's entitlement to receive payment. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that the COUNTY has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect the COUNTY's interest therein, all of which must be satisfactory to the COUNTY.

B. Beginning with the second Application for Payment, each Application shall include:

(i) an affidavit by the CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge the CONTRACTOR's legitimate obligations associated with prior Applications for Payment and

(ii) a "Conditional Waiver of Right to Claim Against Payment Bond and Martin County" completed by the CONTRACTOR and all subcontractors.

C. Pursuant to Section 255.078(1), Fla. Stat., the COUNTY will withhold from each progress payment made to the CONTRACTOR the amount of 5% of the payment as retainage. Pursuant to Section 255.078(3), Fla. Stat., the COUNTY may elect not to pay or release any amounts (such as retainage) that are the subject of a good faith dispute, the subject of a claim brought pursuant to Section 255.05, Fla. Stat., or otherwise the subject of a claim or demand by the COUNTY or CONTRACTOR.

D. The Application for Final Payment shall be made after the CONTRACTOR has, in the opinion of the COUNTY, satisfactorily completed all corrections identified during the Final Inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, and other documents.

E. The Application for Final Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence

of insurance required; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to the COUNTY) of all Lien rights arising out of or Liens filed in connection with the Work.

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

5.3 Review of Applications

A. The COUNTY's approval of any payment requested in an Application for Payment will constitute a representation by the COUNTY that to the best of the COUNTY's knowledge, information and belief:

(i) the Work has progressed to the point indicated;

(ii) the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price the Work, and to any other qualifications stated in the recommendation); and

(iii)the conditions precedent to the CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is the COUNTY's responsibility to observe the Work.

B. The COUNTY's approval of any payment requested in an Application for Payment will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work performed have been exhaustive, extended to every aspect of the Work, or were detailed inspections of the Work; or (ii) there may not be other matters or issues between the parties that might entitle the CONTRACTOR to be paid additionally by the COUNTY or entitle the COUNTY to withhold payment to the CONTRACTOR.

C. The COUNTY may reject the payment request or invoice within 20 (twenty) days after the date on which the payment request or invoice is stamped as received by the COUNTY. The rejection must be in writing and must specify the deficiency in the payment request or invoice and the action necessary to make the payment request or invoice proper. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Application.

D. The COUNTY may refuse to make payment of the full amount because:

(i) claims have been made against the COUNTY on account of the CONTRACTOR's performance or furnishing of the Work;

(ii) Liens have been filed in connection with the Work, except where the CONTRACTOR has delivered a specific Bond satisfactory to the COUNTY to secure the satisfaction and discharge of such Liens;

(iii) there are other items entitling the COUNTY to a set-off against the amount recommended.

(iv) the Work is defective or the completed Work has been damaged, requiring correction or replacement;

(v) the Work for which payment is requested cannot be verified;

(vi) the CONTRACTOR failed to make proper payments to subcontractor(s) for labor, materials or equipment in connection with the Work;

(vii) the Contract Price has been reduced because of modifications or there is reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

(viii) the COUNTY has been required to correct defective Work or complete the Work in accordance with the Contract Documents;

(ix) the CONTRACTOR failed to carry out the Work in accordance with the Contract Documents, or otherwise unsatisfactory prosecution of the Work;

(x) of any other breach of, default under, violation of, or failure to comply with the provisions of the Contract Documents.

E. If the COUNTY refuses to make payment of the full amount, the COUNTY must give the CONTRACTOR written notice within 10 (ten) days of receipt of invoice stating the reasons for such action and promptly pay the CONTRACTOR any amount remaining after deduction of the amount so withheld. The COUNTY shall promptly pay the CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by the COUNTY and the CONTRACTOR, when the CONTRACTOR corrects the reasons for such action to the COUNTY's satisfaction.

5.4 All payments made to the CONTRACTOR, whether Progress or Final, shall be in strict accordance with the "Local Government Prompt Payment Act" addressing payment, retainage, and punch list procedures for the performance of the Work.

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

5.6 The CONTRACTOR shall promptly pay all subcontractors, laborers, materialmen, and suppliers upon receipt of payment from the COUNTY out of the amount paid to the CONTRACTOR on account of such person's portion of the Work, the amount to which such person is entitled, reflecting percentages actually retained from payments to the CONTRACTOR. The CONTRACTOR shall, by appropriate agreement with each subcontractor or other person, require each subcontractor or other person to make payments to sub-subcontractors in similar manner.

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

5.8 In accordance with the provisions of §255.05, Florida Statutes, where the CONTRACTOR requires a waiver from laborers, materialmen, subcontractors, or sub-subcontractors (as each such term is defined by §713.01, Florida Statutes) of the right to make a claim against the Payment Bond in exchange for or to

induce payment of a progress payment or a final payment, such waivers shall comply with the form set forth in §255.05, Florida Statutes, as amended from time to time.

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

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

A. Increase construction manpower in such quantities and crafts as necessary to eliminate the schedule progress deficiency;

B. Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the schedule progress deficiency;

C. Reschedule the Work in conformance with the specification requirements.

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

ARTICLE 6
TIME OF PERFORMANCE

6.1 TIME IS OF THE ESSENCE FOR EACH WORK ORDER ISSUED UNDER THIS AGREEMENT.

6.1.1 Substantial Completion

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

1. All general construction completed and the project components shall be clean, and all systems fully functional.

2. All mechanical and electrical Work substantially complete, fixtures in place, connected, cleaned and usable.

3. All electrical circuits shall be scheduled in panels, and all panels and disconnect switches properly labeled.

4. All painting shall be completed; all signs installed.

5. All floors, glass and metal Work shall be cleaned.

6. All finish hardware shall be installed, and all doors shall be in good Working order.

7. Project site shall be cleared of the CONTRACTOR'S excess equipment, temporary facilities, trailers, and/or building supplies. All temporary construction shall be removed, and all Sitework completed.

8. All operations and maintenance manuals for all equipment shall have been submitted.

9. Manufacturers certifications and warranties shall be delivered to COUNTY.

10. All operations and maintenance training related literature, software and back-up disks have been provided.

11. All required spare parts, materials, as well as any special measuring devices and tools shall have been provided to COUNTY.

12. All air and water balancing reports shall have been submitted.

13. All keys and blanks shall have been provided.

6.1.2 When CONTRACTOR considers the entire Work Order ready for its intended use CONTRACTOR shall notify COUNTY in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that Engineer issue a certificate of Substantial Completion. Promptly thereafter, COUNTY and CONTRACTOR, and Engineer shall make an inspection of the Work to determine the status of completion. For the purpose of this Contract, and for the compliance of those procedures, duties and obligations as set forth in Section 218.70 and Section 218.735, Florida Statutes the term "Substantial Completion" is defined as that point where COUNTY is able to enjoy beneficial occupancy of the Work and where the Work has achieved that level of completion such that COUNTY is able to utilize the entire Project for its intended purposes, including but not limited to the completion of all specified systems and items relating to life, safety and regulatory use, with the exception of incidental or incomplete items except where a lack of completion of such incidental or incomplete items of Work will adversely affect the complete operation of other areas of the Work. Additional conditions (if any) needed to achieve Substantial Completion of the Work and which are project specific are as set forth in attached Exhibits. If COUNTY and Engineer do not consider the Work substantially complete, Engineer will notify CONTRACTOR in writing giving the reasons therefore. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to COUNTY a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. If Engineer considers the Work substantially complete, then, for construction projects having an estimated cost of less than 10 million dollars:

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

1. Within five (5) days of Substantial Completion of the construction services purchased as defined in the Contract, CONTRACTOR shall schedule a walkthrough with COUNTY ("Initial Walkthrough" a/k/a "IW"). The purpose of the IW is to develop a preliminary checklist ("Checklist") of items to be performed by the CONTRACTOR, based upon observations made jointly between the CONTRACTOR and COUNTY during the IW. The IW is to occur within ten (10) days of Substantial Completion of the Work as defined by the Contract, again predicated

upon the CONTRACTOR'S timely initiation of a request for the IW. At its option, COUNTY may conduct the IW with its Field Inspector.

2. CONTRACTOR shall endeavor to address and complete as many items as possible noted on the Checklist either during the IW itself, or thereafter for a period of fifteen (15) days from the date of the IW.

3. No later than fifteen (15) days following the scheduled IW, CONTRACTOR shall again initiate and request a second walkthrough of the Project with COUNTY. The purpose of this second walkthrough is to identify which items remain to be performed from the IW Checklist and to supplement that list as necessary (based, for example, upon work which may have been damaged as a result of the CONTRACTOR'S performance of completion of items contained on the IW Checklist) and for the purpose of developing a joint Final Punch list.

4. The intent of this section is for COUNTY and the CONTRACTOR to cooperate to develop a Final Punch list to be completed no later than thirty (30) days from the date of reaching Substantial Completion of the construction services purchase as defined in the Contract.

5. In no event may the CONTRACTOR request payment of final retainage under Section 718.735, Florida Statutes until the CONTRACTOR considers the Final Punch list to be 100% complete.

6. CONTRACTOR agrees to complete the Final Punch list items within forty-five (45) days of the date of its issuance by COUNTY.

7. CONTRACTOR acknowledges and agrees that no item contained on the Final Punch list shall be considered a warranty item until such time as (a) the Final Punch list is 100% complete, and (b) COUNTY has been able to operate or utilize the affected punch list item for an additional period of fifteen (15) days.

8. CONTRACTOR acknowledges and agrees that COUNTY may, at its option, during performance of the Work and prior to Substantial Completion, issue lists of identified non-conforming or corrective work for the CONTRACTOR to address. The intent of any such COUNTY generated lists prior to Substantial Completion is to attempt to streamline the punch list process upon achieving Substantial Completion, and to allow for the CONTRACTOR to address needed areas of corrective work as they may be observed by COUNTY during performance of the Work.

9. CONTRACTOR acknowledges and agrees that in calculating 150% of the amount which may be withheld by COUNTY as to any Final Punch list item for which a good faith basis exists as to it being complete, as provided for by Section 218.735, Florida Statutes, COUNTY may include within such percentage calculation its <u>total costs</u> for completing such item of work, including its administrative costs as well as costs to address other services needed or areas of work which may be affected in order to achieve full completion of the Final Punch list item. Such percentage shall in no event relate to the schedule of value associated with such Work activity, but rather total costs are based upon the value (i.e. cost) of completing such Work activity based upon market conditions at the time of Final Punch list completion.

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

6.2 Partial Utilization

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

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

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

6.3 Final Inspection

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with COUNTY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

6.4 Final Payment

A. Application for Payment

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

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective

releases or waivers (satisfactory to COUNTY) of all Lien rights arising out of or Liens filed in connection with the Work.

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

B. Review of Application and Acceptance

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to COUNTY for payment. At the same time Engineer will also give written notice to COUNTY and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, Engineer will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

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

a. Ten (10) business days after the date the corrected payment request or invoice is stamped as received; or

b. If the governing body is required by ordinance, charter or other law to approve or reject the corrected payment request, the first business day after the next regularly scheduled meeting of the COUNTY held after the corrected payment request is stamped as received.

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

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

ARTICLE 7
LIQUIDATED DAMAGES; FORCE MAJEURE

7.1 Upon failure of the CONTRACTOR to Substantially Complete the Agreement within the specified period of time, plus approved time extensions, the CONTRACTOR shall pay to the COUNTY daily liquidated damages in the amount shown on Page 1 of this Agreement to reflect the COUNTY's estimated damages resulting from the delay to Substantial Completion.

7.2 Upon failure of the CONTRACTOR to Finally Complete the Agreement within the specified period of time, plus approved time extensions, the CONTRACTOR shall pay to the COUNTY daily liquidated damages in the amount shown on Page 1 of this Agreement to reflect the COUNTY's estimated damages resulting from the delay to Final Completion.

7.3 Milestones, milestone completion dates, and applicable Liquidated Damages shall be in accordance with the Contract Documents.

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

7.5 Force Majeure. A party shall not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is beyond the reasonable control of a party, materially affecting the performance of any of its obligations under this agreement, and could not reasonably have been foreseen or provided against, but will not be excused for failure or delay resulting from only general economic conditions or other general market effects. If either party invokes this provision to avoid performance of any obligation under this Agreement and a Court determines that party wrongfully invoked this provision to evade performance of such an obligation, the aggrieved party shall be entitled to its reasonable attorney's fees and costs for obtaining the Court's determination of the same.

ARTICLE 8
CLAIMS FOR ADDITIONAL TIME

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

1. Nature of the delay or change in the Work;

2. Dates of commencement and cessation of the delay or change in the Work;

3. Activities on the current progress schedule affected by the delay or change in the Work;

4. Identification and demonstration that the delay or change in Work affects the critical path;

5. Identification of the source of delay or change in the Work;

6. Anticipated extent of the delay or change in the Work; and

7. Recommended action to minimize the delay.

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

8.3 No Damages for Delay; Exclusive Remedy. The CONTRACTOR shall not be entitled to and hereby waives any and all claims for damages which it may suffer by reason of delay, acceleration, loss of efficiency, or other related time or impact-based claims (hereinafter collectively "delay") or for delay attributable to any foreseen or unforeseen condition, or for delays claimed to be the result of active, intentional, knowing, or passive interference by the COUNTY, or its agents, and waives damages that it may suffer by reason of such claims for lost profits, loss or impairment of bonding capacity, destruction of business, extended overhead, supervision, extended, unabsorbed home office overhead; the extension of time granted herein, being the CONTRACTOR's sole remedy, with the exception that in the event of demonstrated critical, compensable, non-concurrent delay suffered by the CONTRACTOR, the CONTRACTOR may claim as its sole and exclusive remedy any associated, extended direct jobsite general conditions expended by the CONTRACTOR (hereinafter "applicable extended general conditions") in a sum not to exceed $250.00 per each day of delay. Apart from extensions of time or acceleration costs approved by the COUNTY and any applicable extended general conditions, no payment of claim for delay damages shall be made to the CONTRACTOR as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work, whether such delay be avoidable or unavoidable. Notwithstanding anything herein to the contrary, provided the CONTRACTOR has otherwise satisfied the requirements of this Agreement, the CONTRACTOR shall be entitled to an increase in the Contract Price based upon approved general condition, insurance, and bond premium costs resulting from delays for which the COUNTY has approved by Change Order or Construction Change Directive, provided, however, the COUNTY shall not be required to pay such additional amounts for any days following the date on which the CONTRACTOR achieves Final Completion for the appropriate portion of the Work.

8.4 The time during which the CONTRACTOR is delayed in the performance of the Work by the acts or omissions of the COUNTY, acts of God, unusually severe and abnormal climatic conditions or other conditions beyond the CONTRACTOR's control and which the CONTRACTOR could not reasonably have foreseen and provided against, shall be added to the Contract Time stated in the Agreement; provided, however, that no claim by the CONTRACTOR for an extension of time for such delays be considered unless made in accordance with Paragraph 8.1.

8.5 The COUNTY shall not be obligated or liable to the CONTRACTOR for and the CONTRACTOR hereby expressly waives any claims against any damages, costs, or expenses of any nature whatsoever which the CONTRACTOR, its subcontractors or sub-subcontractors may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequence, congestion, disruptions or the like, arising from or out of any act or omission of the COUNTY, or any of the events referred to in Paragraph 8.4 above, it being understood and agreed that the CONTRACTOR's sole and exclusive remedy in such event shall be an extension of Contract Time, but only if claim is properly made in accordance with Paragraph 8.1.

8.6 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled critical path of construction. Based on 30-Year, National Weather Service historical rainfall averages for Martin County, the

CONTRACTOR shall anticipate the amount of rainfall days affecting the schedule as normal conditions outlined in the following months below:

JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC
2	2	3	2	3	5	5	6	6	5	3	2

ARTICLE 9
SITE CONDITIONS

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

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

9.3 Physical Conditions (Including Underground Facilities). The CONTRACTOR shall have full responsibility for physical conditions, and Underground Facilities owned by the COUNTY or others, as shown or indicated in the Contract Documents. The CONTRACTOR shall have full responsibility for reviewing and checking all such information and data. The COUNTY shall not be responsible for accuracy or completeness of data, plans, and specifications and the CONTRACTOR shall have full responsibility for checking all information and data. If the Contract Documents necessitate amending to order changes in the Work due to Underground Facilities owned by the COUNTY or others, whether they be shown or indicated or newly discovered, the COUNTY shall authorize the required changes in the Work by Change Order. If those Underground Facilities owned by the COUNTY or others cause or will cause delays in the performance or extend completion of all or part of the work, the CONTRACTOR shall absorb all related delay, extension, or acceleration costs, however caused, except that if the COUNTY and the CONTRACTOR agree that the delays require a change in Contract Time, the COUNTY shall authorize the necessary change in Contract Time only to the extent that such delays exceed 30 (thirty) days impact to controlling work items. However, an extension in Contract Time, when and if so granted shall be the CONTRACTOR’s sole and exclusive remedy with respect to the COUNTY for any delay, disruption, interference, inefficiency, acceleration, extension or hindrance, and associated costs, however caused, resulting from variance in the location or configuration of Underground Facilities owned by the COUNTY or others as shown or indicated, or from newly discovered Underground Facilities owned by the COUNTY or others.

9.4 Special Requirements for Underground Facilities. The CONTRACTOR shall have full responsibility for the following list. Except as otherwise provided, all costs involved and time required to perform these responsibilities shall be considered as having been included in the Contract Price and in the CONTRACTOR's schedule for the performance of the Work within the Contract Time, even if the Contract Documents need amending to authorize minor deviations or changes in the Work due to those Underground Facilities including utilities.

A. Field locating any and all Underground Facilities including utilities shown or indicated as to depth and alignment in advance of excavation;

B. Notifying the COUNTY of any newly discovered Underground Facility and promptly notifying that the COUNTY of that discovery;

C. Shoring, blocking and protecting Underground Facilities including utilities shown, indicated or discovered;

D. Coordination, scheduling and sequencing the Work with the COUNTY's of all Underground Facilities shown, indicated or discovered;

E. Repairing any damage to the satisfaction of the COUNTY, to the extent that the damage was due to the CONTRACTOR's failure to adhere to the requirements, or to the fault or negligence of the CONTRACTOR; and

F. The safety and protection of any affected the Work, and for repairing any damage done to the work.

9.5 If those Underground Facilities owned by the COUNTY or others cause or will cause delays in the performance or extend completion of all or part of the work, the CONTRACTOR shall absorb all related delay, extension or acceleration costs, however caused, except that if the COUNTY and the CONTRACTOR agree that the delays require a change in Contract Time, the COUNTY shall authorize the necessary change in Contract Time only to the extent that such delays exceed 30 (thirty) days impact to controlling work items. However, an extension in Contract Time, when and if so granted shall be the CONTRACTOR's sole and exclusive remedy with respect to the COUNTY for any delay, disruption, interference, inefficiency, acceleration, extension or hindrance and associated costs, however caused, resulting from variance in the location or configuration of Underground Facilities owned by the COUNTY or others shown or indicated, or from newly discovered Underground Facilities owned by the COUNTY or others.

9.6 Unless it prejudices the Work already excavated and uncovered, the CONTRACTOR shall schedule layout, excavation and uncovering of the Work or Underground Facilities a sufficient time in advance to allow the COUNTY'S design professional's review, and the possible amending or supplementing of the Contract Documents.

ARTICLE 10
INDEMNIFICATION

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

amendment thereto by change order to otherwise.

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

ARTICLE 11
TERMINATION

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

1. refuses or fails to supply enough properly skilled workers or proper and sufficient materials and equipment;

2. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the CONTRACTOR and the Subcontractors;

3. disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;

4. performs Work that does not conform to Work Order requirements;

5. fails to meet the Work Order schedule or fails to make progress on the Work so as to endanger performance of the Work Order;

6. abandons or refuses to proceed with any or all Work; or

7. otherwise breaches, fails to comply fully with, or is in default of any provision of the Contract Documents or Work Order.

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

1. take possession of the Work site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the CONTRACTOR;

2. accept assignment of subcontracts pursuant to this Agreement; and

3. finish the Work by whatever reasonable method the COUNTY may deem expedient, and charge all completion costs against any monies owed or to be owed to CONTRACTOR, or back charge CONTRACTOR for any and all such completion costs, or

4. terminate the CONTRACTOR and hire a completion CONTRACTOR to finish the Work by whatever reasonable method the COUNTY may deem expedient, and charge all completion costs,

including costs for construction, architectural, engineering, project management, and any other expenses, against any monies owed or to be owed to CONTRACTOR, or back charge CONTRACTOR for any and all such completion costs, or

5. set off any and all such completion costs against any monies then due or to become due on any other projects that the COUNTY has with CONTRACTOR.

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

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

11.5 Pursuant to Section 287.135, Fla. Stat., the COUNTY may immediately terminate this Agreement for cause if the CONTRACTOR, its affiliates, or its subcontractors are found to have submitted a false certification per Section 4.22 of this Agreement; or if the CONTRACTOR, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of this Agreement. As provided in Section 287.135(8), Fla. Stat., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

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

ARTICLE 12
SUSPENSION OF WORK

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

ARTICLE 13
CHANGES IN THE WORK

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

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

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

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

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

A. in the Drawings and designs, and Specifications;

B. in the method or manner of performance of the Work;

C. directing acceleration in the performance of the Work.

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

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

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

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

B. by negotiated lump sum; or

C. cost plus. If this option is selected, the COUNTY reserves the right to request any and all documentation from the CONTRACTOR in support of its foregoing Actual Costs, and the CONTRACTOR agrees promptly to supply such information.

13.9 For changes in the Work performed by the CONTRACTOR’s own forces, the CONTRACTOR shall be entitled to a percentage 10% (ten percent) mark-up for Actual Costs as defined in Section 1.

13.10 For changes in the Work performed by subcontractors: (A) the subcontractor shall be entitled to mark-up the cost of the change(s) by 10% (ten percent); and (B) the CONTRACTOR shall be entitled to mark-up the subcontractor’s total by 5% (five percent). The foregoing shall be the maximum amount allowable for subcontractor’s and the CONTRACTOR’s Actual Costs as defined in Section 1.

ARTICLE 14
MATERIALS, EQUIPMENT AND WORKMANSHIP; SUBSTITUTIONS

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

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

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

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

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

14.3.3 CONTRACTOR shall allow an additional fifteen (15) days for COUNTY'S review of substitutions. All requests for substitutions with submittal data must be made at least fifty (50) days prior to the time CONTRACTOR must order, purchase or release for manufacture or fabrication. Approval of a substitution shall not relieve CONTRACTOR from responsibility for compliance with all requirements of the Contract. CONTRACTOR shall coordinate the change with all trades and bear the expense for any changes in other parts of the Work caused by any substitutions.

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

ARTICLE 15
COMPLIANCE

15.1 All work, labor, materials and equipment provided under each Work order shall be performed in

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

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

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

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

ARTICLE 16
NON-DISCRIMINATION

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

ARTICLE 17
DEFECTIVE WORK

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

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

ARTICLE 18
BONDS AND INSURANCE

18.1 Payment and Performance Bonds. The CONTRACTOR shall, upon execution and return of this Agreement to the COUNTY, furnish a Public Payment Bond and a Performance Bond, pursuant to §255.05, Florida Statutes, in at least an amount equal to the Contract Price, for any Agreement over $200,000 (two hundred thousand dollars), covering the faithful performance of this Agreement and all the CONTRACTOR's faithful performance and payment of all the CONTRACTOR's obligations under the Contract Documents. The Bonds shall be recorded at the Martin County Clerk of the Circuit Court's Office at the CONTRACTOR's expense. The Surety must be included in the most recent United States Department of the Treasury List of Acceptable Sureties, authorized to issue surety bonds in Florida, and which maintains a surety rating of "A-" or better. A complete copy of the fully executed Payment Bond shall be posted in a conspicuous place at the Project site. If the Surety on any Bond furnished by the CONTRACTOR is declared bankrupt, becomes insolvent, its authorization to do business in the State of Florida is terminated, it ceases to be listed on the United States Department of Treasury List of Acceptable Sureties, or its surety rating ceases to be an "A-" or better, the CONTRACTOR shall within 5 (five) days thereafter substitute another Payment Bond, Performance Bond, and Surety, each of which shall be in accordance with the Contract Documents and acceptable to the COUNTY . An action to enforce any claim against a payment bond must be brought within one year from the last furnishing of labor, services, or materials, or as otherwise stated in §95.11 (5)(e), Florida Statutes. An action to enforce any claim against a performance bond must be brought within five years in accordance with §95.11(2)(b) , Florida Statutes, and applicable case law.

18.2 Insurance

A. Certificate of Insurance. One certified true copy of the policy or policies must be furnished by the CONTRACTOR to the COUNTY prior to commencement of any demolition, Site Work, Site preparation or construction Work. The Certificate(s) of Insurance must state Martin County and its Board of County Commissioners as an Additional Insured on all policies except the Workers Compensation. The statement "Additional Insured" is to be listed in the Description

Block of the Insurance Certificate along with the Project name. The indication that Martin County Board of County Commissioners is a Certificate Holder is not sufficient for this issue. The Additional Insured endorsement must be attached to the Certificate of Insurance and shall include coverage for Completed Operations under the General Liability policy.

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

(i) All policies and endorsements shall be issued on Insurance Service Office (ISO) forms or on forms providing broader and no less restrictive coverage. Notwithstanding the foregoing, the form and content of all policies and endorsements must be acceptable to the COUNTY. All insurance carriers must carry an A.M. Best Rating of A:IX or better and coverage should apply on a Primary and Noncontributory basis. At the discretion of the COUNTY, other coverage types and /or specific endorsements may be required depending upon the type and scope of work to be performed. All insurance must be acceptable by and approved by the COUNTY as to form and types of coverage.

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

(iii) The policy(s) shall be written for the Contract Times, commencing with the initial demolition, Site Work and/or Site preparation, and ending at the Final Completion and shall contain an endorsement providing for extension of the policy(s) for up to 2 (two) years. The Products and Completed Operations portions of the General Liability shall extend for a period of 10 (ten) years after the Final Acceptance of the Project by the COUNTY and shall include an "Additional Insured" endorsement.

(iv) All liability polices required herein shall be written on an occurrence basis

(v) The policies shall name the COUNTY, its commissioners and staff as additional insured (including Completed Operations coverage under the General Liability) as their interest may appear under this Agreement.

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

(vii) It is the responsibility of the CONTRACTOR to ensure any independent contractors and subcontractors utilized on the project also comply with these insurance requirements.

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

D. Specific Insurance Limits

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

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

Should the scope of work performed by the CONTRACTOR qualify its employees for benefits under Federal the Worker's Compensation Statute (i.e. Longshoreman & Harbor the Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

(ii) Commercial General Liability, with limits of not less than:

$ 1,000,000	each occurrence
$ 1,000,000	personal/advertising injury
$ 2,000,000	products/completed operations (per project aggregate)
$ 2,000,000	general aggregate (per project aggregate)
$ 100,000	fire damage legal (any 1 fire)
$ 10,000	medical expense (any 1 person)

Coverage to include include bodily injury, property damage liability, personal and advertising injury, products and completed operations, fire damage legal liability and medical expense coverage. Contractual Liability is to be included to cover the hold harmless agreement set forth in the Agreement. Coverage is to extend to independent contractors and fellow employees. XCU coverage is to be included. Coverage is to include a cross liability or severability of interest provision as provided under the standard ISO form separation of insureds clause. There should be no "damage to your work" exclusion for work performed by subcontractors. Policy is to include coverage for pollution release at project location in which the insured is performing non-environmental operations. There shall be no exclusion for mold, silica or respirable dust or bodily injury or property damage arising out of heat, smoke, fumes or ash from a hostile fire. If the project involves environmental exposures, Environmental Impairment Liability coverage shall be maintained.

(iii) Automobile Liability - $1,000,000 (one million dollars) Combined Single Limit coverage for all owned, hired, leased and non-owned vehicles.

(iv) Umbrella Liability - to include the Employers Liability, general liability and automobile in underlying policy schedule, with limits of not less than $1,000,000 (one million dollars).

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

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

agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent.

ARTICLE 19
PERFORMANCE GUARANTEE AND WARRANTY

19.1 All materials and equipment incorporated into any Work shall be warrantied and guaranteed as new quality and of the highest grade of quality for their intended use. All Work shall be performed in good workmanship and shall be in accordance with all Contract Documents and industry standards. The Work shall be functionally sound, technically proficient, developed with structural integrity, and shall be in compliance with all governing laws, regulations, and applicable codes. The CONTRACTOR warrants all Work against defects for a period of 1 (one) year (unless longer guarantees or warranties are provided for elsewhere in the Agreement or at law, in which case the longer periods of time shall prevail) from the date of Substantial Completion, regardless of whether the Work was performed by the CONTRACTOR or any of its subcontractors.

19.2 If defects are identified during the warranty period, the CONTRACTOR shall repair or replace the defect and cure such defect within 48 (forty-eight) hours of receipt of written notice. The CONTRACTOR warrants such repaired or replaced Work for a period of 1 (one) year from the completion of the warranty work or the warranty period specified, whichever is longer. Should the CONTRACTOR fail to timely cure such defects, the COUNTY may proceed to perform the work at the CONTRACTOR's expense and may back charge the CONTRACTOR for all costs associated with the work.

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

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

ARTICLE 20
SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

20.2 Shop Drawings, Product Data and Samples.

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

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

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

ARTICLE 21
SAFETY

21.1 The CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The CONTRACTOR shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the COUNTY and users who may be affected thereby.

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

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

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

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

21.4 The CONTRACTOR shall provide, or cause to be provided, to each worker on the Work site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Work site who fails or refuses to use the same. The COUNTY shall have the right, but not the obligation,

to order the CONTRACTOR to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices, with which order the CONTRACTOR shall promptly comply.

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

ARTICLE 22
PROTECTION OF WORK AND PROPERTY

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

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

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

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

COUNTY. CONTRACTOR shall replace any and all such vegetation damaged during construction activities (other than vegetation specified to be removed) at no expense to the COUNTY.

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

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

ARTICLE 23
TESTS AND INSPECTIONS

23.1 If any Work (including the work of others) that is to be inspected, tested, or approved is covered without written concurrence of the COUNTY, it must be uncovered for observation if requested by the COUNTY. Such uncovering shall be at the CONTRACTOR's expense.

23.2 The CONTRACTOR shall be liable for any additional testing or inspections necessitated by defective work performed or materials supplied by the CONTRACTOR or by any of its subcontractors or vendors of any tier.

ARTICLE 24
UTILITY COORDINATION

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

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

24.3 FPL calls attention to the fact that there may be energized, high voltage electric lines, both overhead and underground, located in the area of this Project. The CONTRACTOR must visually survey the area and take the necessary steps to identify all overhead and underground facilities prior to commencing construction to determine whether the construction of any proposed improvements will bring any person, tool, machinery, equipment, or object closer to FPL's power lines than the OSHA-prescribed limits. If the CONTRACTOR identifies such, it shall re-design the Project to allow for safe construction given the pre-existing power line location, or make arrangements with FPL to, either deenergize and ground its facilities, or relocate them. The CONTRACTOR must do this before allowing any construction near power lines. If it is necessary for the CONTRACTOR and/or subcontractor to operate or handle cranes, digging apparatus, draglines, mobile equipment, or any other equipment, tools or materials in such a manner that they might come closer to underground or overhead power lines than is permitted by local, state or federal regulations, the CONTRACTOR or subcontractor must notify FPL in writing of such planned operation prior to the commencement thereof and make all necessary arrangements with FPL in order to carry out the work in a safe manner. Any work in the vicinity of the electric lines should be suspended until these arrangements are finalized and implemented. The CONTRACTOR shall be required to complete a "Notification of FPL Facilities" form prior to the commencement of the Work.

ARTICLE 25
HAZARDOUS MATERIALS

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

ARTICLE 26
AUDIT

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

ARTICLE 27
PUBLIC RECORDS

27.1 The CONTRACTOR shall comply with the provisions of Chapter 119, Fla. Stat. (Public Records Law), in connection with this Agreement and shall provide access to public records in accordance with §119.0701, Fla. Stat. and more specifically Contractor shall:

27.1.1 Keep and maintain public records required by the County to perform the Agreement.

27.1.2. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat. or as otherwise provided by law.

27.1.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the CONTRACTOR does not transfer the records to the County.

27.1.4. Upon completion of the Agreement, transfer, at no cost, to the County all public records in possession of the CONTRACTOR or keep and maintain public records required by the County to perform the Agreement. If the CONTRACTOR transfers all public records to the County upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

27.2 **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 (772) 419-6959, public_records@martin.fl.us, 2401 SE MONTEREY ROAD, STUART, FL 34996.**

27.3 Failure to comply with the requirements of this Article shall be deemed a default as defined under the terms of this Agreement and constitute grounds for termination.

ARTICLE 28
ASSIGNMENT

28.1 The COUNTY and the CONTRACTOR each binds itself, its officers, directors, qualifying agents, partners, successors, assigns, and legal representatives to the other party hereto and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Agreement.

28.2 CONTRACTOR shall not assign, transfer, convey or otherwise dispose of the contract or its right,

title or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous written consent of the COUNTY and sureties.

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

ARTICLE 29
ATTORNEY'S FEES AND COSTS

29.1 In the event the CONTRACTOR defaults in the performance of any of the terms, covenants, and conditions of this Agreement, the CONTRACTOR agrees to pay all damages and costs incurred by the COUNTY in the enforcement of this Agreement, including reasonable attorney's fees, expert fees, court costs, and all expenses, including but not limited to any costs from any state court or federal court proceedings, whether in a trial court or in an appellate court.

29.2 Except as otherwise provided in this Agreement, the parties expressly agree that each party will bear its own attorney’s fees and court costs incurred in connection with this Agreement.

ARTICLE 30
NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing in at least one of the following methods:

(a) Certified United States Mail, postage prepaid, return receipt requested; or

(b) Overnight courier, such as by FedEx or UPS, with a request for receipt acknowledgment; or

(c) Hand-delivery to a person authorized to accept delivery of notice with a request for a receipt acknowledgment; or

(d) Email if and only if agreed to in advance by COUNTY and CONTRACTOR in writing specifying the email addresses, and if so agreed, the email shall a request receipt acknowledgement.

The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

Martin County Purchasing Division
2401 SE Monterey Rd.
Stuart, FL 34996

WITH A COPY TO:

County Attorney

Martin County
2401 SE Monterey Rd.
Stuart, FL 34996

FOR CONTRACTOR:

Ferreira Construction Southern Division Co., Inc.
13000 SE Flora Avenue
Hobe Sound, FL 33455

CONTRACTOR shall be required to notify the County, in writing, whenever there is a change in the address of CONTRACTOR (to the place) for which notice is to be sent (giving notice), as required in this section. In the event CONTRACTOR fails to maintain a current address on record with the County as required herein, County shall be deemed to have notified CONTRACTOR by using the last known address on record and County shall not have any responsibility or obligation to investigate the validity of the address that CONTRACTOR has provided. As a result, CONTRACTOR agrees to hold County harmless and defend same for any action or occurrence or non-occurrence as a result of CONTRACTOR not receiving notice due to CONTRACTOR's failure to update its address for notification.

All notices sent in accordance with this section shall be deemed to be effective upon receipt or refusal of same unless otherwise expressly provided in this Agreement.

ARTICLE 31
RESOLUTION OF CLAIMS AND DISPUTES

31.1 As a condition precedent to the filing of any legal proceedings, the parties shall endeavor to resolve claim disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The party shall, by mutual agreement, select a mediator within 15 (fifteen) days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the COUNTY shall select the mediator, who, if selected solely by the COUNTY, shall be a mediator certified by the Supreme Court of Florida. The mediator's fee shall be paid in equal shares by each party to the mediator. If a party fails to comply with this section, including, but not limited to, filing a lawsuit without mediating before filing the lawsuit, the party in violation shall be liable for the reasonable attorneys' fees and costs of the other party in enforcing this provision, and such amounts shall be awarded by the Court.

31.2 Law, Jurisdiction, Venue, Waiver of Jury Trial. This agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Nineteenth Judicial Circuit in and for Martin County, Florida. If any claim arising from, related to or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HERETO EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO AN ADVISORY JURY. If a party fails to withdraw a request for jury trial or for an advisory jury in a lawsuit arising out of this agreement after written notice by the other party of a violation of this section, the party making the request for jury trial or advisory jury shall be liable for the reasonable attorneys' fees and court costs of the other party in contesting the request for jury trial or advisory jury, and such amounts shall be awarded by the Court in adjudicating the motion.

31.3 Certified claims. If CONTRACTOR submits a claim seeking an increase in the Contract Price in the amount of ten percent (10%) or more of the Contract Price, an increase in the Contract Time for substantial or final completion by more than thirty (30) days, or both, upon the request of the COUNTY in its sole discretion, CONTRACTOR shall, within thirty (30) days, submit to COUNTY a "certified claim," that is, a claim made in writing under oath by a person duly authorized by the CONTRACTOR, and shall contain a statement that:

(i) The claim is made in good faith;

(ii) The claim's supporting data are accurate and complete to the best of the person's knowledge and belief;

(iii) The amount of the claim accurately reflects the amount that the claimant believes is due from the COUNTY; and

(iv) The certifying person is duly authorized by the claimant to certify the claim.

FAILURE TO PROVIDE THE REQUESTED CERTIFICATION WITHIN THE PRESCRIBED PERIOD OF THIRTY (30) DAYS SHALL CONSTITUTE A FORFEITURE OF THE ENTIRE CLAIM.

31.4 False, fraudulent, or inflated claim. If a court finds a certified claim is false, fraudulent, or inflated, whether in whole or in part, CONTRACTOR shall:

(i) Be liable to the COUNTY for an amount equal to three (3) times the amount of the claim that is false, fraudulent, or inflated;

(ii) Immediately, fully, and irrevocably forfeit the entire amount of the claim;

(iii) Be liable to the COUNTY for all costs and fees (including, without limitation, reasonable attorneys' fees, court costs, expert fees, and consulting fees) incurred by the COUNTY to review, defend, and evaluate the claim; and

(iv) Be subject to debarment from COUNTY contracting for a period not to exceed five (5) years.

31.5 Innocent claimant, notice. Notwithstanding the foregoing, CONTRACTOR is an innocent claimant and not liable for a false, fraudulent, or inflated claim if CONTRACTOR submitted a certified claim to the COUNTY reasonably believing that such claim was free of any material misstatements, or any exaggerated, inflated, or unsubstantiated assertions or damages and had no reasonable basis to doubt the truth, veracity, or accuracy of such claim at the time it was submitted, and within fifteen (15) days of discovering the falsity of the claim, took immediate steps to modify, correct, or withdraw such claim and provided the COUNTY with immediate written notice thereof.

ARTICLE 32
MISCELLANEOUS

32.1 Taxes. The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The CONTRACTOR shall not be exempt from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONTRACTOR authorized to use the COUNTY'S Tax Exemption Number in securing such materials. The CONTRACTOR shall be responsible for payment

of all federal, state, and local taxes and fees applicable to the Work and same shall be included in the Contract Price.

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

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

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

32.5 Copies. Multiple copies of this Agreement may be fully executed by all parties, each of which shall be deemed to be an original. Faxed, photostatic, or electronically scanned copies of the fully-executed Agreement shall be as effective and authentic as the original for any purpose including but not limited to the enforcement of any provision of this Agreement.

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

REVIEWED BY

Kevin Abbate
Parks & Recreation Director

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

George Stokus
Assistant County Administrator

FERREIRA CONSTRUCTION
SOUTHERN DIVISION CO., INC.

John Ciabattari
Vice President

APPROVED AS TO FORM & LEGAL SUFFICIENCY

Sarah W. Woods
County Attorney

EXHIBIT A

SCOPE OF SERVICES

Continuing services contract to provide all labor, materials, equipment and services necessary for marine related new construction, renovations and repairs, including but not limited to:

- ADA accessibility including new installation, modification or repairs of existing structures
- Beach access and crossovers on dunes
- Boardwalks,
- Boat docks and ramps
- Bridge repair consisting of wood, concrete or metal.
- Dredging at boat ramps and boat docks
- Fishing piers
- Marine and/or wetland related projects
- New construction or repairs of amenities such as water and electricity
- Pavilions and Gazebos on any waterfront
- Piers and wooden/plastic decks
- Seawall bordering any waterway
- Shoreline debris removal
- Shoreline stabilization on beaches, inner coastal waterways, rivers lakes, canals and retention areas
- Underwater concrete
- Underwater inspection, mapping and repairs

Funds for this Contract may be derived from state and/or federal grants; therefore, the successful contractor(s) must comply with all state and federal guidelines.

Individual projects (work orders) shall not exceed $300,000.00 per Section 255.20, Florida Statute (as amended).

Proposals shall be requested on a project by project basis. The Contractor will be required to provide an itemized cost proposal for each project based on R.S. Means pricing minus the discount bid by the Contractor. Markup for materials and subcontractors shall be in accordance with Article 13.9 and 13.10 of the Agreement. Proposals shall be provided within ten (10) business days of request.

Liquidated damages shall be determined on a project-by-project basis and identified in the Work Order.

Work Orders **$200,000 or greater** (or otherwise indicated)

Payment & Performance Bonds shall be required for all Work Orders $200,000 or greater (or otherwise indicated) and shall be recorded in the public records of Martin County. A certified copy of completed and recorded bonds must be delivered to and accepted by the County (Attn: Purchasing Division / pur_div@martin.fl.us) prior to commencement of the Work. Bond premiums shall be paid by Contractor. Bonds shall be on the form provided by the County and written through a licensed agency that fulfills the requirements of §287.0935, Fla. Stat.

EXHIBIT B

FEMA CONTRACT PROVISIONS

These provisions are incorporated into the Contract for this scope, as applicable.

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

   Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant

thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

   Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

DAVIS-BACON ACT (Not applicable to PA grants)

Compliance with the Davis-Bacon Act.

1. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

2. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

3. Additionally, contractors are required to pay wages not less than once a week.

COPELAND ANTI-KICKBACK ACT (Not applicable to PA grants)

Compliance with the Copeland “Anti-Kickback” Act.

1. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

2. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the

subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

Compliance with the Contract Work Hours and Safety Standards Act.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1 of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum of $26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section.

3. Withholding for unpaid wages and liquidated damages. The Martin County Board of County Commissioners (COUNTY) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

2. The contractor agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

DEBARMENT AND SUSPENSION

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by COUNTY. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

BYRD ANTI-LOBBYING AMENDMENT

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of $100,000 or more shall file the required certification.

Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. Contractor must sign and submit to the COUNTY the required certification.

PROCUREMENT OF RECOVERED MATERIALS

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

    - Competitively within a timeframe providing for compliance with the contract performance schedule;
    - Meeting contract performance requirements; or
    - At a reasonable price.

2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site: https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program

3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

ACCESS TO RECORDS

Access to Records. The following access to records requirements apply to this contract:

1. The Contractor agrees to provide the COUNTY, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

4. In compliance with the Disaster Recovery Act of 2018, the COUNTY and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

DHS SEAL, LOGO, AND FLAGS

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

EXHIBIT C

SAMPLE WORK ORDER

RFB2021-3337
MARINE CONTRACTING
WORK ORDER NO._____

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

Substantial Completion Time: _____ calendar days

Final Completion Time: _____ calendar days

Liquidated Damages: $_____ per day

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

(CONTRACTOR NAME)

_____
(Name)
(Title)

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

_____
Department Director Name
Title

Work orders $200,000 or greater (or otherwise indicated)

Payment & Performance Bonds shall be recorded in the public records of Martin County. **A certified copy of completed and recorded bonds must be delivered to and accepted by the County (Attn: Purchasing Division / pur_div@martin.fl.us) prior to commencement of the Work.** Bond premiums shall be paid by Contractor. Bonds shall be on the form provided by the County and written through a licensed agency that fulfills the requirements of §287.0935, Fla. Stat.

EXHIBIT D

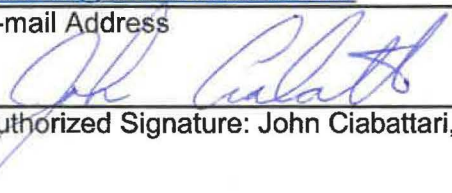
RFB2021-3337
MARINE CONTRACTING

Description	% Discount
Discount from the "Total Including Overhead and Profit" cost for each element listed in the current R.S. Means Building Construction Cost Data Annual Edition	16%

INSTRUCTIONS

Bids must be received no later than the date and time stated in the Advertisement. Bids received after that time & date will not be considered.

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

Ferreira Construction Southern Division Co., Inc. Company Name	John Ciabattari Name of Authorized Representative (Print)
13000 SE Flora Avenue Street Address	Vice President Title
Hobe Sound, FL 33455 City, State, Zip	jciabattari@ferreiraconstruction.com E-mail Address
(772) 286-5123 Telephone	 Authorized Signature: John Ciabattari, Vice Presi