

**HALL ROAD PUMP STATION PROJECT
B2-20-01**

SECTION V

CONTRACT AND CERTIFICATE

This section includes the following forms that must be executed by the selected Contractor upon notification by the Owner:

- Contract
- Certificate

These forms DO NOT need to be submitted with the Bid.

CONTRACT

THIS AGREEMENT, made and entered into this ____ day of _____, 2020, A.D., by and between Brevard County, Florida, party of the first part (hereinafter sometimes called the "Owner"), and _____, party of the second part (hereinafter sometimes called the "Contractor").

WITNESSETH: That the parties hereto, for the consideration hereinafter set forth, mutually agree as follows:

1. DEFINITIONS

- 1.1 All terms in this Agreement are defined in the Instructions to Bidders, General Conditions and Supplementary Conditions for the **Hall Road Pump Station Bid No. B-2-20-01**, and shall have the meanings designated herein.

2. SCOPE OF THE WORK

- 2.1 The Contractor shall furnish all labor, materials, equipment, machinery, tools, apparatus, and transportation and perform all of the work to construct the project per the plans prepared by **the Engineer of Record. Mead and Hunt, Inc., as shown on the Construction plans**, and in the Contract Documents entitled as the Owner's Engineer, and shall do everything required by these Contract Documents and as described in the Specifications and Contract Documents entitled:

The Hall Road Pump Station Project BID NO. B-2-20-01

3. THE CONTRACT SUM

- 3.1 The Owner shall pay to the Contractor for the faithful performance of the Contract, in lawful money of the United States, and subject to additions and deductions as provided in the Contract Documents.
- 3.2 Based upon the price shown in the Proposal heretofore submitted to the Owner by the Contractor, a copy of said Proposal being a part of these Contract Documents, the aggregate amount of this Contract for Part # _____ the sum of _____ (\$ _____).

4. COMMENCEMENT AND COMPLETION OF WORK

- 4.1 The Contractor shall commence work within 5 calendar days after issuance of Notice to Proceed.
- 4.2 The Contractor shall prosecute the work with faithfulness and diligence and shall cause final completion of the work not later than 210 calendar days after the issuance of Notice to Proceed.
- 4.3 Prior to commencing the work the Contractor shall execute, deliver to the Owner, and record in the public records of Brevard County, required payment and performance bonds in substantially the same format provided in Section VI.

5. CONTRACTOR'S ACCEPTANCE OF CONDITIONS

- 5.1 The Contractor hereby agrees that the project site has been carefully examined and that sufficient observations have been made such that Contractor is completely familiar with all site conditions and requirements as they relate to the work described in these Contract Documents, and assumes full responsibility therefore.
- 5.2 The provisions of this Contract shall control any inconsistent provisions contained in the specifications. All Drawings and Specifications have been read and carefully considered by the Contractor, who understands and agrees to their sufficiency for the work to be done. It is expressly agreed that under no circumstances, conditions or situations, shall this Contract be more strongly construed against the Owner than against the Contractor and the Surety.
- 5.3 Any ambiguity or uncertainty in the Drawings or Specifications shall be interpreted and construed by the Owner's Engineer and the decision shall be final and binding upon all parties.
- 5.4 It is distinctly understood and agreed that the passing, approval and acceptance of any part of the work or material by the Owner, the Owner's Engineer, or by any agent or representative of the Owner or Owner's Engineer as in compliance with the terms of this Contract and of the Drawings and Specifications covering said work, shall not operate as a waiver by the Owner of strict compliance with the terms of this Contract, and/or the Drawings and Specifications covering said work; and the Owner may require the Contractor and the surety to repair, replace, restore and/or make the work comply strictly, and in all things, with this Contract and the Drawings and Specifications. Any and all of said work and/or materials which within a period of one year from and after the date of the passing, approval, and/or acceptance of any such work or material, are found to be defective or to fail in any way to comply with this Contract or with the

Drawings and Specifications, shall be reconstructed as directed by the Owner. This provision shall not apply to materials or equipment normally expected to deteriorate or wear out and become subject to normal repair and replacement before their condition is discovered. The Contractor shall not be required to do normal maintenance work under the guarantee provisions. Failure on the part of the Contractor and the Surety to immediately repair or replace any such defective materials and workmanship shall entitle the Owner, in the Owner's sole discretion, to replace or repair the same and, after notice, recover the reasonable cost of such replacement and repair from the Contractor and the Surety, who shall in any event be jointly and severally liable to the Owner for all damage, loss and expense caused to the Owner by reason of the Contractor's breach of this Contract and the Contractor's failure to comply strictly and in all things with this Contract and with the Drawings and Specifications.

6. LIQUIDATED DAMAGES

- 6.1 It is mutually agreed that time is of the essence of this Contract and should the Contractor fail to complete the work within the specified time, or any authorized extension thereof, there shall be deducted from the compensation otherwise to be paid to the Contractor, and the Owner will retain the amount of liquidated damages stated in Section 8-10.2 of F.D.O.T. Standard Specifications for Road and Bridge Construction, per calendar day elapsing beyond the specified time for completion or any authorized extension thereof, which sum shall represent the actual damages which the Owner will have sustained by failure of the Contractor to complete the work within the specified time; it being further agreed that said sum is not a penalty, but is the stipulated amount of damages sustained by the Owner in the event of such default by the Contractor.
- 6.2 For the purposes of this Article, the day of final acceptance of the work shall be considered a day of delay, and the scheduled day of completion of the work shall be considered a day scheduled for production.
- 6.3 The Owner has the right to deduct, as payment on such liquidated damages, against any money the Owner owes the Contractor.
- 6.4 The Owner does not waive its right to liquidated damages due under the Contract by allowing the Contractor to continue and to finish the work, or any part of it, after the expiration of the Contract Time including granted time extensions.

7. PARTIAL AND FINAL PAYMENTS

- 7.1 In accordance with the provisions fully set forth in the General Conditions (Section VII), and subject to additions and deductions as provided, the Owner shall pay the Contractor as follows:

- a) Within 30 days after receipt of the Contractor's request for partial payment by the Owner, accompanied by partial release of liens and waivers from all subcontractors and suppliers, for the previous payment, the Owner shall make partial payments to the Contractor, on the basis of the estimate of work as approved by the Owner or the Owner's Engineer, for work performed during the preceding calendar month, less ten percent (10%) of the amount of such estimate which is to be retained by the Owner as retainage. After the Owner or Owner's Engineer determine that 50-percent of the construction has been completed pursuant to the Contract, the Contractor shall reduce the amount withheld from each subsequent progress payment to five (5) percent of the payment until all work has been performed, and accepted by the Owner or Owner's Engineer, strictly in accordance with this Agreement.
- b) Upon submission by the Contractor of evidence satisfactory to the Owner that all payrolls, material bills and other costs incurred by the Contractor in connection with the construction of the work have been paid in full, and also, after all guarantees that may be required have been furnished and are found acceptable by the Owner, final payment on account of this Agreement shall be made within sixty (60) days after completion by the Contractor of all work covered by this Agreement and acceptance of such work by the Owner.
- c) Notwithstanding the foregoing, pursuant to section 255.05(11), Florida Statutes, when the Contractor has furnished and recorded a payment and performance bond and provided the Owner with a written consent from the Surety regarding the Project or payment in question, no such releases or waivers shall be required. The Surety may, in a writing served on the Owner, revoke its consent or direct that the Owner withhold a specified amount from a payment, which shall be effective upon receipt.
- d) Contractor acknowledges that, pursuant to Florida law, the Contractor may not lien Owner's interest in the Project site. Contractor agrees to advise all subcontractors and material suppliers of the non-lienable nature of the project and to further furnish each such person or entity a copy of the Labor and Material Payment Bond for the project.

8. ADDITIONAL BOND

- 8.1 It is further mutually agreed between parties hereto that if, at any time after the execution of this Agreement and the Public Construction Performance Bond and the Public Construction Payment Bond hereto attached for its faithful performance, the Owner shall deem the surety or sureties upon such bonds to be unsatisfactory, or if,

for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at the Contractor's expense, and within three days after the receipt of Notice from the Owner to do so, furnish an additional bond or bonds, in such form and amount, and with such sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.

9. CONTRACT DOCUMENTS

- 9.1 The Contract Documents, as that term is defined in the Instructions to Bidders, are as fully a part of this Contract as if herein repeated, whether or not those documents are actually attached to this Contract. The Drawings, geotechnical report, permits and permit requirements are contained in Section IX, Appendix 1 and 2 (attached separately).
- 9.2 The Contractor shall perform the services under this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status.

10. PUBLIC RECORDS AND AUDIT REQUIREMENTS

- 10.1 In the performance of this Agreement, the Contractor shall keep books, records and accounts of all activities related to the Agreement in compliance with generally accepted accounting procedures and in compliance with the Public Records Laws of the State of Florida (including, but not limited to Chapter 119, Florida Statutes).
- 10.1 All records or documents created by the Contractor or provided to the Contractor in connection with the activities or services provided under the terms of this Agreement, are public records and the Contractor agrees to comply with any request for such public records or documents made in accordance with Section 119.07, Florida Statutes. The Contractor shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- 10.3 Records, documents, books and accounts ordinarily and necessarily required for the performance of this Agreement shall be kept, maintained and open to inspection by the Owner and its representatives during regular business hours and shall be retained by the Contractor or for a period of five (5) years after completion or termination of this Agreement.

- 10.4 Pursuant to Section 119.0701, F.S., a request to inspect or copy public records relating to this Agreement for services must be made directly to the Owner. If the Owner does not possess the requested records, the Owner shall immediately notify the Contractor of the request, and the Contractor must provide the records to the Owner or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Ch. 119, F.S. If the Contractor fails to provide the public records to the Owner within a reasonable time, the Contractor may be subject to penalties under Section 119.10, F.S.
- 10.5 The Contractor shall identify and ensure that all public records which 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 Owner.
- 10.6 Upon completion of the Agreement, the Contractor shall transfer, at no cost to the Owner, all public records in possession of the Contractor or keep and maintain public records required by the Owner to perform the services under this Agreement. If the Contractor transfers all public records to the Owner upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records that are stored electronically must be provided to the Owner, upon request from the Owner's custodian of public records, in a format that is accessible by and compatible with the information technology systems of the Owner.
- 10.7 Failure to comply with the provisions of this section shall result in the Owner taking enforcement action against the Contractor, including the cost to the Owner for gaining the Contractor's compliance, which will include, but is not limited to, the Owner's staff time expended to obtain compliance with this section, litigation filing fees and attorney's fees. The Owner may also unilaterally terminate the Agreement if the Owner refuses to allow public access to Public Records as required by law.
- 10.8 No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this agreement shall be subject to copyright by the Contractor in the United States or any other country.
- 10.9 **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 AGREEMENT, CONTACT THE COUNTY'S**

CUSTODIAN OF PUBLIC RECORDS FOR THE NATURAL RESOURCES MANAGEMENT OFFICE by telephone at (321) 633-2016, by email at Jackie.Thompson@brevardfl.gov, or at the mailing address below:

Brevard County Natural Resources Management Department
ATTN: Custodian of Records
2725 Judge Fran Jamieson Way
Building A, Room 219
Viera, FL 32940

11. NOTICE

All notices and written communication between the parties shall be sent by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. Any and all notices required by this Agreement shall be delivered to the parties at the addresses identified below:

Owner:

Contractor:

Engineer:

12. ATTORNEY'S FEES

12.1 In the event of any legal action to enforce the terms of this Contract, each party shall bear its own attorney's fees and costs, provided, this clause shall only apply to the Contractor and County, as parties to this Agreement, and shall not be construed to prevent the Owner from covering its attorney's fees, expert witness fees or costs against a surety in accordance with the provisions of the performance bond or under any provision of state law requiring the surety to pay attorney's fees or costs.

13. MODIFICATION

13.1 This Agreement, together with Contract Documents, constitutes the entire contract between the County and the Contractor and supersedes all prior written or oral understandings. No modification of this agreement shall be

binding on Owner or Contractor unless reduced to writing and executed by a duly authorized representative of Owner and Contractor.

14. GOVERNING LAWS

14.1 This Agreement shall be governed, interpreted and construed according to the laws of the State of Florida, and federal laws and regulations.

15. COMPLIANCE WITH STATUTES

15.1 It shall be the Contractor's responsibility to be aware of and comply with all applicable federal, state and local laws.

15.2 BUY AMERICAN – The bidder proposes and agrees, if this Proposal is accepted, to comply with 41 U.S.C. Chapter 83: Buy American statutes.

15.3 The Contractor shall comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857 (h), Section 508 of the Clean Water Act (3 U.S. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR Part 15 and 61). with the terms and conditions found in attachment

16. VENUE

16.1 Venue for any legal action by any party to this Agreement to interpret, construe, or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County Florida, and any trial shall be non-jury.

17. CONFLICT OF INTEREST

17.1 The Contractor shall not engage the services of any person or persons now employed by the County, including any department, agency board or commission thereof, to provide services relating to this Contract without written consent from the County.

17.2 The Contractor shall not accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to sub-agreements.

17.3 The Contractor shall not award a contract or subcontract under this Agreement to any company who the Owner has a financial or any other interest in, including but not limited to employing an employee of the Owner or any member of an employee's, agents, or officer's immediate family.

18. INFORMATION RELEASE/GRANTOR RECOGNITION

- 18.1 News releases, publicity releases, or advertisements relating to this Agreement or the tasks or projects associated with the project, shall be submitted in writing to the County and be approved in advance of any release or publication. Releases shall identify the funding entity as well as the funding source.

19. INDEMNIFICATION

- 19.1 The Contractor shall indemnify and hold harmless the County and its agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of its work under this Agreement, where such claim, damage, loss or expense, is caused, in whole or in part, by the act or omission of the Contractor, any subcontractor, any supplier, or anyone directly or indirectly employed by the Contractor, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused, in part, by a party indemnified hereunder. In any and all claims against the County, or any of its agents or anyone directly or indirectly employed by the Contractor, or anyone for whose acts any of them may be liable, indemnification obligation under this Paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the custodial contractor, under workers' compensation acts, or other related policies of insurance. The parties acknowledge specific consideration has been exchanged for this provision.
- 19.2 The contractor shall hold the Division of Emergency Management harmless against all claims of whatever nature arising out of the contractor's and/or subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

20. UNAUTHORIZED ALIEN WORKERS

- 20.1 The Contractor is required to utilize E-verify to confirm the employment eligibility of any employee hired during the contract term and any renewal.
- 20.2 The Contractor may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-verify Program, the contractor hires or employs a person who is not eligible for employment.
- 20.3 Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

21. PUBLIC ENTITY CRIMES

21.1 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of threshold amount provided in Section 287.017, Florida Statutes for CATEGORY TWO for a period of 36 months from date of being placed on convicted vendor list.

22. SURVIVAL

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

23. SCRUTINIZED COMPANIES.

The Contractor certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, the Contractor agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the Owner may immediately terminate this Agreement for cause if the Contractor its affiliates, or its subcontractors are found to have submitted a false certification; 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 the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

IN WITNESS WHEREOF the parties by their undersigned, authorized agents have executed this agreement as of the date last written below.

Attest:

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA
Party of the First Part

Scott Ellis, Clerk

Bryan Lober, Chair
As approved by the Board on:
September 24, 2019

Reviewed for legal form and content:

Christine Valliere, Assistant County Attorney

Witnessed in the presence of**

CONTRACTOR
Party of the Second Part

Attest:

_____(Seal)

(*) In the event that the Contractor is a Corporation, there shall be attached to each counterpart, a certified copy of a resolution of the Board of Directors of the Corporation, authorizing the officer who signs the Contract to do so in its behalf.

(**) Two witnesses are required when Contractor is sole ownership or partnership.

CERTIFICATE

STATE OF FLORIDA

COUNTY OF _____

I HEREBY CERTIFY that at a meeting of the Board of Directors of _____
_____, a corporation under the laws of the State of _____,
held on _____, 2020, the following resolution was duly passed and adopted:

"RESOLVED, that _____, as _____ President of the corporation,
be is hereby authorized to execute the Contract dated _____, 2020, between the BOARD OF
COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, and this corporation, and that the
execution thereof, attested by the Secretary of the corporation and with corporate seal affixed,
shall be the official act and deed of this corporation."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the
corporation on this ____ day of _____, 2020.

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Secretary of Corporation