

EXECUTIVE SUMMARY

Recommendation to award Invitation to Bid (ITB) 14-6352 - Naples Beach Renourishment (Sand Placement) to Earth Tech Enterprises, Inc., in the amount of \$748,861.20 to place, grade and transport approximately 78,678 tons of beach quality sand as authorized by the Federal Emergency management Agency (FEMA) PW 0679-Naples Beach Renourishment to repair damages as a result of Tropical Storm Debby (Project 195-90038), authorize staff to withhold Notice-to-Proceed (NTP) issuance until the FEMA PW revision has been issued, authorize all required budget amendments, authorize the Chairman to execute the corresponding agreement, and make a finding that this item promotes tourism.

OBJECTIVE: To place, grade and transport beach quality sand for TS Debby-Naples Beach Renourishment.

CONSIDERATIONS: This beach renourishment is 100% in response to damages created by TS Debby to the Naples Beach with reimbursement of 75% of eligible federal storm expenses and 12.5% of eligible state storm expenses.

ITB No. 14-6352 for the placement, grading and transport of approximately 78,678 tons of beach quality sand as required by the FY 2014/15 Naples Beach Renourishment project was posted on September 15, 2014 with notices sent to 1,896 firms and 58 firms downloading full packages. Three responses were received on the October 15, 2014 due date. Staff evaluated the bids and determined that Earth Tech Enterprises, Inc. was the lowest qualified and responsive bidder. The Board of County Commissioners (BCC) local vendor preference policy was not included in this solicitation given that grant stipulations require full and open competition. Earth Tech Enterprises, Inc. is however a local contractor with principle offices in Naples, FL.

Earth Tech Enterprises, Inc. is an experienced contractor that has successfully completed sand placement contracts for Collier County in the past. Beach quality sand will be provided for placement at each unloading station by Phillips and Jordan, Inc. Two unloading and beach sand transport operations will be operated concurrently. Earth Tech Enterprises will transport sand down the beach; grade the sand to the final design configuration; perform turbidity monitoring and beach sediment testing. Earth Tech Enterprises has reviewed the County's schedule and is committed to work with the truck haul contractor to renourish the Naples Beach with approximately 78,678 tons of sand. Beach renourishment must be complete by 12/20/2014.

Staff recommends that ITB No. 14-6352 be awarded to Earth Tech Enterprises, Inc. as the lowest, qualified and responsive bidder. The bid tab is listed as Attachment A.

A Notice-to-Proceed (NTP) to Earth Tech Enterprises, Inc. will not be issued until FEMA has updated the means and methods to PW 0679 to allow truck haul construction from and upland sand source. This is expected to be in place by 10/28/2014. However, staff is requesting that the BCC approve this contract but direct staff to withhold issuance of the NTP until the FEMA PW revision has been issued.

FISCAL IMPACT: The expenditure of \$748,861.20 for the Sand Placement contract for the Naples Beach Renourishment project (Project 195-90038) was anticipated during development of the FY 14/15 Tourist Development Tax Beach Renourishment Fund (195) budget. A budget amendment will be necessary to move funds in the amount of \$748,861.20 from Tourist Development Tax Fund 195, Project 80096 – Beach Analysis design into Project 90038 – TS Debby Naples Beach PW 0679.

The cost for the entire project including the sand supply, delivery, placement, CEI and engineering activities is currently estimated at \$2,730,000. \$2,500,000 was originally budgeted for this project. Funding is available through TDC Fund 195 reserves and will reduce reserves for future construction by approximately \$230,000.

Federal Emergency Management Administration (FEMA) Disaster 4068 - PW 0679-1 has been authorized to provide emergency funding to repair the damages to the Naples Beach. This PW will reimburse Collier County for 75% of eligible federal storm expenses and 12.5% of eligible state storm expenses. It is expected that all but the 12.5% (approximately \$93,608) local share of eligible expenses will be reimbursed to Collier County.

GROWTH MANAGEMENT IMPACT: There is no impact to the Growth Management Plan related to this action.

COMMITTEE RECOMMENDATIONS: This item will be presented to the Coastal Advisory Committee on 10/23/2014 for a recommendation of approval and 10/27/2014 to the Tourist Development Council for a recommendation of approval. Results of these advisory board actions will be sent to the BCC after each Advisory Board meeting.

LEGAL CONSIDERATIONS: This item has been approved as to form and legality and requires majority vote for approval. – CMG

RECOMMENDATION: That the Board of County Commissioners awards Invitation to Bid (ITB) 14-6352 – Naples Beach Renourishment (Sand Placement) to Earth Tech Enterprises, Inc., in the amount of \$748,861.20 to place, grade and transport approximately 78,678 tons of beach quality sand as authorized by the Federal Emergency Management Agency (FEMA) PW 0679-Naples Beach Renourishment to repair damages as a result of Tropical Storm Debby (Project 195-90038), authorize staff to withhold Notice-to-Proceed (NTP) issuance until the FEMA PW revision have been issued, authorizes all required budget amendments, authorizes the Chairman to execute the corresponding agreement, and makes a finding that this item promotes tourism.

Prepared By: J. Gary McAlpin, P.E., Coastal Zone Management

Attachment A: Bid Tabulations

Attachment B: Earth Tech Enterprises, Inc. Contract

Line #	Description	Earth Tech Enterprises, Inc.	Prolime Corporation	Phillips & Jordan, Inc.
6	Bid Total	\$ 748,861.20	\$ 786,347.34	\$ 789,149.38
	Bid Schedule	yes	yes	yes
	Material Manufacturers	yes	yes	yes
	Subcontractors	yes	yes	yes
	Statement of Experience	yes	yes	yes
	Trench Safety	yes	yes	yes
	Immigration Affidavit	yes	yes	yes
	W-9	yes	yes	yes
	Bonding	yes	yes	yes
	E-Verify	yes	yes	yes
	Insurance	yes	yes	yes
	Supplemental Terms (FEMA)	yes		yes

Opened/Date: Adam Northrup;10/15/2014; 3:00PM

Opened/Date:Brenda Reaves; 10/15/2014; 3:00PM



Naples Beach Renourishment (Sand Placement)
COLLIER COUNTY BID NO. 14-6352
COLLIER COUNTY, FLORIDA

Adam Northrup, Procurement Strategist
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Telephone: (239) 252 - 6098
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Design Professional:
Atkins North America



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PUBLIC NOTICE

INVITATION TO BID Naples Beach Renourishment COUNTY BID NO. 14-6352

Separate sealed bids for the construction of the Naples Beach Renourishment Project, addressed to Ms. Joanne Markiewicz, Director, Procurement Services, will be received at the Collier County Government, Purchasing Department, 3327 Tamiami Trail E, Naples, FL 34112, until **3:00 P.M. LOCAL TIME, on the 15th day of October, 2014** at which time all bids will be publicly opened and read aloud. Any bids received after the time and date specified will not be accepted and shall be returned unopened to the Bidder. The anticipated project budget is: Seven hundred and fifty thousand (\$750,000).

A non-mandatory pre-bid conference shall be held at the Purchasing Department, Conference Room A, at **3:00 p.m. LOCAL TIME on the 1st day of October, 2014** at which time all prospective Bidders may have questions answered regarding the Bidding Documents for this Project.

Sealed envelopes containing bids shall be marked or endorsed "Bid for Collier County Government, Collier County, Naples Beach Renourishment (Sand Placement) Bid No. 14-6352 and Bid Date of 10/15/2014". No bid shall be considered unless it is made on an unaltered Bid form which is included in the Bidding Documents. The Bid Schedule shall be removed from the Bidding Documents prior to submittal.

One contract will be awarded for all Work. Bidding Documents may be examined on the Collier County Purchasing Department Online Bidding System website: www.colliergov.net/bid. Copies of the Bidding Documents may be obtained only from the denoted website. Bidding Documents obtained from sources other than the Collier County Purchasing Department website may not be accurate or current.

Each bid shall be accompanied by a certified or cashiers check or a Bid Bond in an amount not less than five percent (5%) of the total Bid to be retained as liquidated damages in the event the Successful Bidder fails to execute the Agreement and file the required bonds and insurance within ten (10) calendar days after the receipt of the Notice of Award. The Successful Bidder acknowledges and agrees that it shall execute the Agreement in the form attached hereto and incorporated herein.

The Successful Bidder shall be required to furnish the necessary Payment and Performance Bonds, as prescribed in the General Conditions of the Contract Documents. All Bid Bonds, Payment and Performance Bonds, Insurance Contracts and

Certificates of Insurance shall be either executed by or countersigned by a licensed resident agent of the surety or insurance company having its place of business in the State of Florida. Further, the said surety or insurance company shall be duly licensed and qualified to do business in the State of Florida. Attorneys-in-fact that sign Bid Bonds or Payment and Performance Bonds must file with each bond a certified and effective dated copy of their Power of Attorney.

In order to perform public work, the Successful Bidder shall, as applicable, hold or obtain such contractor's and business licenses, certifications and registrations as required by State statutes and County ordinances.

Before a contract will be awarded for the Work contemplated herein, the Owner shall conduct such investigations as it deems necessary to determine the performance record and ability of the apparent low Bidder to perform the size and type of work specified in the Bidding Documents. Upon request, the Bidder shall submit such information as deemed necessary by the Owner to evaluate the Bidder's qualifications.

The Successful Bidder shall be required to finally complete all Work within **forty-one (41)** calendar days from and after the Commencement Date specified in the Notice to Proceed.

The Owner reserves the right to reject all Bids or any Bid not conforming to the intent and purpose of the Bidding Documents, and to postpone the award of the contract for a period of time which, however, shall not extend beyond one hundred twenty (120) days from the bid opening date without the consent of the Successful Bidder.

Dated this 15th day of September.

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA
BY: /s/ Joanne Markiewicz
Director, Procurement Services

PART B - INSTRUCTIONS TO BIDDERS

Section 1. Definitions

1.1 The term "Owner" used herein refers to the Board of County Commissioners, or its duly authorized representative.

1.2 The term "Project Manager" used herein refers to the Owner's duly authorized representative and shall mean the Division Administrator or Department Director, as applicable, acting directly or through duly authorized representatives.

1.3 The term "Design Professional" refers to the licensed professional engineer or architect who is in privity with the Owner for the purpose of designing and/or monitoring the construction of the project. At the Owner's discretion, any or all duties of the Design Professional referenced in the Contract Documents may be assumed at any time by the Project Manager on behalf of the Owner. Conversely, at the Owner's discretion the Project Manager may formally assign any of his/her duties specified in the Contract Documents to the Design Professional.

1.4 The term "Bidder" used herein means one who submits a bid directly to the Owner in response to this solicitation.

1.5 The term "Successful Bidder" means the lowest qualified, responsible and responsive Bidder who is awarded the contract by the Board of County Commissioners, on the basis of the Owner's evaluation.

1.6 The term "Bidding Documents" includes the Legal Advertisement, these Instructions to Bidders, the Bid Schedule and the Contract Documents as defined in the Agreement.

1.7 The term "Bid" shall mean a completed Bid Schedule, bound in the Bidding Documents, properly signed, providing the Owner a proposed cost for providing the services required in the Bidding Documents.

Section 2. Preparation of Bids

2.1 The Bids must be submitted on the standard form herein furnished by the Owner (pages 14 – 26 as bound in these Bidding Documents). By submitting a Bid, Bidder acknowledges and agrees that it shall execute the Agreement in the form attached hereto and incorporated herein. The Bidder shall complete the Bid in ink or by typewriter and shall sign the Bid correctly. Bid Schedules submitted on disk/CD shall be accompanied by a hard copy of the completed Bid Schedule which shall be signed and dated by the Bidder. The Bid may be rejected if it contains any omission, alteration of form, conditional bid or irregularities of any kind. Bids must be submitted in sealed envelopes, marked with the Bid Number, Project Name and Bid opening Date and Time, and shall be addressed to the Purchasing Department, 3327 Tamiami Trail E, Naples, FL 34112. If forwarded by mail, the sealed envelope containing the Bid must be

enclosed in another sealed envelope addressed as above. Bids received **at the location specified herein** after the time specified for bid opening will be returned to the bidder unopened and shall not be considered.

Section 3. Bid Deposit Requirements

3.1 No Bid shall be considered or accepted unless at the time of Bid filing the same shall be accompanied by a cashiers check, a cash bond posted with the County Clerk, a certified check payable to Owner on some bank or trust company located in the State of Florida insured by the Federal Deposit Insurance Corporation, or Bid Bond, in an amount not less than 5% of **the bidder's maximum possible award (base bid plus all add alternates)** (collectively referred to herein as the "Bid Deposit"). The Bid Deposit shall be retained by Owner as liquidated damages if the Successful Bidder fails to execute and deliver to Owner the unaltered Agreement, or fails to deliver the required Performance and Payment Bonds or Certificates of Insurance, all within ten (10) calendar days after receipt of the Notice of Award. Bid Bonds shall be executed by a corporate surety licensed under the laws of the State of Florida to execute such bonds, with conditions that the surety will, upon demand, forthwith make payment to Owner upon said bond. Bid Deposits of the three (3) lowest Bidders shall be held until the Agreement has been executed by the Successful Bidder and same has been delivered to Owner together with the required bonds and insurance, after which all three (3) Bid Deposits shall be returned to the respective Bidders. All other Bid Deposits shall be released within ten (10) working days of the Bid Opening. No Bid including alternates, shall be withdrawn within one hundred and twenty (120) days after the public opening thereof. If a Bid is not accepted within said time period it shall be deemed rejected and the Bid Deposit shall be returned to Bidder. In the event that the Owner awards the contract prior to the expiration of the 120 day period without selecting any or all alternates, the Owner shall retain the right to subsequently award to the Successful Bidder said alternates at a later time but no later than 120 days from opening, unless otherwise agreed by the Procurement Director and the Successful Bidder.

3.2 The Successful Bidder shall execute five (5) copies of the Agreement in the form attached and deliver same to Owner within the time period noted above. The Owner shall execute all copies and return one fully executed copy of the Agreement to Successful Bidder within thirty (30) working days after receipt of the executed Agreement from Successful Bidder unless any governmental agency having funding control over the Project requires additional time, in which event the Owner shall have such additional time to execute the Agreement as may be reasonably necessary.

Section 4. Right to Reject Bids

4.1 The Owner reserves the right to reject any and all Bids or to waive informalities and negotiate with the apparent lowest, qualified Bidder to such extent as may be necessary for budgetary reasons.

4.2 Bids submitted by a corporation must be executed in the corporate name by the president, a vice president, or duly authorized representative. The corporate address and state of incorporation must be shown below the signature.

4.3 Bids by a partnership must be executed in the partnership name and signed by a general partner whose title must appear under the signature and the official address of the partnership must be shown below said signature.

4.4 If Bidder is an individual, his or her signature shall be inscribed.

4.5 If signature is by an agent or other than an officer of corporation or general partner of partnership, a properly notarized power of attorney must be submitted with the Bid.

4.6 All Bids shall have names typed or printed below all signatures.

4.7 All Bids shall state the Bidder's contractor license number.

4.8 Failure to follow the provisions of this section shall be grounds for rejecting the Bid as irregular or unauthorized.

Section 5. Withdrawal of Bids

Any Bid may be withdrawn at any time prior to the hour fixed in the Legal Advertisement for the opening of Bids, provided that the withdrawal is requested in writing, properly executed by the Bidder and received by Owner prior to Bid Opening. The withdrawal of a Bid will not prejudice the right of a Bidder to file a new Bid prior to the time specified for Bid opening.

Section 6. Late Bids

No Bid shall be accepted that fails to be submitted prior to the time specified in the Legal Advertisement.

Section 7. Interpretation of Contract Documents

7.1 No interpretation of the meaning of the plans, specifications or other Bidding Documents shall be made to a Bidder orally. Any such oral or other interpretations or clarifications shall be without legal effect. All requests for interpretations or clarifications shall be in writing, addressed to the Purchasing Department, to be given consideration. All such requests for interpretations or clarification must be received at least ten (10) calendar days prior to the Bid opening date. Any and all such interpretations and supplemental instructions shall be in the form of written addendum which, if issued, shall be sent by mail or fax to all known Bidders at their respective addresses furnished for such purposes no later than three (3) working days prior to the date fixed for the opening of Bids. Such written addenda shall be binding on Bidder and shall become a part of the Bidding Documents.

7.2 It shall be the responsibility of each Bidder to ascertain, prior to submitting its Bid, that it has received all addenda issued and it shall acknowledge same in its Bid.

7.3 As noted in the Legal Advertisement, attendance by all bidders at the Pre-Bid Conference is non-mandatory.

Section 8. Examination of Site and Contract Documents

8.1 By executing and submitting its Bid, each Bidder certifies that it has:

- a. Examined all Bidding Documents thoroughly;
- b. Visited the site to become familiar with local conditions that may in any manner affect performance of the Work;
- c. Become familiar with all federal, state and local laws, ordinances, rules, and regulations affecting performance of the Work; and
- d. Correlated all of its observations with the requirements of Bidding documents.

No plea of ignorance of conditions or difficulties that may exist or conditions or difficulties that may be encountered in the execution of the Work pursuant to these Bidding Documents as a result of failure to make the necessary examinations and investigations shall be accepted as an excuse for any failure or omission on the part of the Successful Bidder, nor shall they be accepted as a basis for any claims whatsoever for extra compensation or for an extension of time.

8.2 The Owner will make copies of surveys and reports performed in conjunction with this Project available to any Bidder requesting them at cost; provided, however, the Owner does not warrant or represent to any Bidder either the completeness or accuracy of any such surveys and reports. Before submitting its Bid, each Bidder shall, at its own expense, make such additional surveys and investigations as may be necessary to determine its Bid price for the performance of the Work within the terms of the Bidding Documents. This provision shall be subject to Section 2.3 of the General Conditions to the Agreement.

Section 9. Material Requirements

It is the intention of these Bidding Documents to identify standard materials. When space is provided on the Bid Schedule, Bidders shall specify the materials which they propose to use in the Project. The Owner may declare any Bid non-responsive or irregular if such materials are not specifically named by Bidder.

Section 10. Bid Quantities

10.1 Quantities given in the Bid Schedule, while estimated from the best information available, are approximate only. Payment for unit price items shall be based on the

actual number of units installed for the Work. Bids shall be compared on the basis of number of units stated in the Bid Schedule as set forth in the Bidding Documents. Said unit prices shall be multiplied by the bid quantities for the total Bid price. Any Bid not conforming to this requirement may be rejected. Special attention to all Bidders is called to this provision, because if conditions make it necessary or prudent to revise the unit quantities, the unit prices will be fixed for such increased or decreased quantities. Compensation for such additive or subtractive changes in the quantities shall be limited to the unit prices in the Bid. Subsequent to the issuance of a notice to proceed, the Project Manager and the Successful Bidder shall have the discretion to re-negotiate any unit price(s) where the actual quantity varies by more than 25% from the estimate at the time of bid.

Section 11. Award of Contract

11.1 Any prospective bidder who desires to protest any aspect(s) or provision(s) of the bid invitation (including the form of the bid documents or bid procedures) shall file their protest with the Procurement Director prior to the time of the bid opening strictly in accordance with Owner's then current purchasing ordinance and policies.

11.2 **Statement of Award**: The Award of Contract shall be issued to the lowest, responsive and qualified Bidder determined by the base bid, and any, or all, selected alternates, and the Owner's investigations of the Bidder. In determining the lowest, responsive and qualified bidder, the Owner shall consider the capability of the Bidder to perform the contract in a timely and responsible manner. When the contract is awarded by Owner, such award shall be evidenced by a written Notice of Award, signed by a Purchasing professional of the Owner's Purchasing Department or his or her designee and delivered to the intended awardee or mailed to awardee at the business address shown in the Bid.

11.3 Award recommendations will be posted outside the offices of the Purchasing Department generally on Wednesdays or Thursdays prior to the presentation to the Board of County Commissioners. Award of Contract will be made by the Board of County Commissioners in public session. Any actual or prospective bidder who desires to formally protest the recommended contract award must file a notice of intent to protest with the Procurement Director within two (2) calendar days (excluding weekends and holidays) of the date that the recommended award is posted. Upon filing of said notice, the protesting party will have five (5) days to file a formal protest, said protest to strictly comply with Owner's then current purchasing ordinance and policies. A copy of the purchasing ordinance and policies is available at <http://www.colliergov.net/Index.aspx?page=762>.

For Bidders who may wish to receive copies of Bids after the Bid opening, The Owner reserves the right to recover all costs associated with the printing and distribution of such copies.

11.4 **Certificate of Authority to Conduct Business in the State of Florida (Florida Statute 607.1501)**

In order to be considered for award, firms must be registered with the Florida Department of State Divisions of Corporations in accordance with the requirements of Florida Statute 607.1501 and provide a certificate of authority (www.sunbiz.org/search.html) prior to execution of a contract. A copy of the document may be submitted with the solicitation response and the document number shall be identified. Firms who do not provide the certificate of authority at the time of response shall be required to provide same within five (5) days upon notification of selection for award. If the firm cannot provide the document within the referenced timeframe, the County reserves the right to award to another firm.

Section 12. Sales Tax

12.1 The Successful Bidder acknowledges and agrees that Owner may utilize a sales tax savings program and the Successful Bidder agrees to fully comply, at no additional cost to Owner, with such sales tax savings program implemented by the Owner as set forth in the Agreement and in accordance with Owner's policies and procedures.

Section 13. Exclusion of County Permits in Bid Prices

13.1 To ensure compliance with Section 218.80, F.S., otherwise known as "The Public Bid Disclosure Act", Collier County will pay the Contractor for all Collier County permits and fees applicable to the Project, including license fees, permit fees, impact fees or inspection fees applicable to this Work through an internal budget transfer(s). Hence, bidders shall not include these permit/fee amounts in their bid offer. However, the Successful Bidder shall retain the responsibility to initiate and complete all necessary and appropriate actions to obtain the required permits other than payment for the items identified in this section. Owner will not be obligated to pay for any permits obtained by Subcontractors.

13.2 The Successful Bidder shall be responsible for procuring and paying for all necessary permits not issued by Collier County pursuant to the prosecution of the work.

Section 14. Use of Subcontractors

14.1 To ensure the Work contemplated by the Contract Documents is performed in a professional and timely manner, all Subcontractors performing any portion of the work on this Project shall be "qualified" as defined in Collier County Ordinance 2013-69, meaning a person or entity that has the capability in all respects to perform fully the Agreement requirements and has the integrity and reliability to assure good faith performance. A Subcontractor's disqualification from bidding by the Owner, or other public contracting entity within the past twelve months shall be considered by the Owner when determining whether the Subcontractors are "qualified."

14.2 The Owner may consider the past performance and capability of a Subcontractor when evaluating the ability, capacity and skill of the Bidder and its ability to perform the Agreement within the time required. Owner reserves the right to disqualify a Bidder who

includes Subcontractors in its bid offer which are not “qualified” or who do not meet the legal requirements applicable to and necessitated by this Agreement.

14.3 The Owner may reject all bids proposing the use of any subcontractors who have been disqualified from submitting bids to the Owner, disqualified or de-certified for bidding purposes by any public contracting entity, or who has exhibited an inability to perform through any other means.

14.4 Notwithstanding anything in the Contract Documents to the contrary, the Bidders shall identify the subcontractor(s) it intends to use for the categories of work as set forth in the List of Subcontracts attached hereto, said list to be submitted with its bid. Bidders acknowledge and agree that the subcontractors identified on the list is not a complete list of the subcontractors to be used on the Project, but rather only the major subcontractors for each category of Work as established by Owner. Bidders further acknowledge that once there is an Award of Contract, the Successful Bidder shall identify, subject to Owner’s review and approval, all the subcontractors it intends to use on the Project. Once approved by Owner, no subcontractor shall be removed or replaced without Owner’s prior written approval.

Section 15. Prohibition of Gifts

No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service or other item of value to any County employee, as set forth in Chapter 112, Part III, Florida Statutes, Collier County Ethics Ordinance No. 2004-05, and County Administrative Procedure 5311. Violation of this provision may result in one or more of the following consequences: a. Prohibition by the individual, firm, and/or any employee of the firm from contact with County staff for a specified period of time; b. Prohibition by the individual and/or firm from doing business with the County for a specified period of time, including but not limited to: submitting bids, RFP, and/or quotes; and, c. immediate termination of any contract held by the individual and/or firm for cause.

Section 16. Lobbying

All firms are hereby placed on NOTICE that the Board of County Commissioners does not wish to be lobbied, either individually or collectively about a project for which a firm has submitted a response.

Firms and their agents are not to contact members of the County Commission for such purposes as meeting or introduction, luncheons, dinners, etc. During the process, **from solicitation closing to final Board approval**, no firm or their agent shall contact any other employee of Collier County in reference to this solicitation, or the vendor’s response, with the exception of the Procurement Director or his designee(s). Failure to abide by this provision may serve as grounds for disqualification for award of this contract to the firm.

Section 17. Public Entity Crimes

By its submitting a Bid, Bidder acknowledges and agrees to and represents it is in compliance with the terms of Section 287.133(2)(a) of the Florida Statutes which read as follows:

"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, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real 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 the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

CONSTRUCTION BID
BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

Naples Beach Renourishment (Sand Placement)
BID NO. 14-6352

Full Name of Bidder EARTH TECH ENTERPRISES INC.

Main Business Address 5425 GOLDEN GATE PKWY #3

NAPLES, FL
34116

Place of Business SAME

Telephone No. 239 774 1223 Fax No. 239 774 1227

State Contractor's License # CGC016677

State of Florida Certificate of Authority Document Number P00000098390

Federal Tax Identification Number 59-3679652

DUNS # N/A CCR# N/A Cage Code N/A

To: BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA
(hereinafter called the Owner)

The undersigned, as Bidder declares that the only person or parties interested in this Bid as principals are those named herein, that this Bid is submitted without collusion with any other person, firm or corporation; that it has carefully examined the location of the proposed Work, the proposed form of Agreement and all other Contract Documents and Bonds, and the Contract Drawings and Specifications.

Bidder proposes, and agrees if this Bid is accepted, Bidder will execute the Agreement included in the Bidding Documents, to provide all necessary machinery, tools, apparatus and other means of construction, including utility and transportation services necessary to do all the Work, and furnish all the materials and equipment specified or referred to in the Contract Documents in the manner and time herein prescribed and according to the requirements of the Owner as therein set forth, furnish the Contractor's Bonds and Insurance specified in the General Conditions of the Contract, and to do all other things required of the Contractor by the Contract Documents, and that it will take full payment the sums set forth in the following Bid Schedule:

Unit prices shall be provided in no more than two decimal points, and in the case where further decimal points are inadvertently provided, rounding to two decimal points will be conducted by Purchasing staff.

NOTE: If you choose to bid, please submit an ORIGINAL and ONE COPY of your bid pages.

BID SCHEDULE
Naples Beach Renourishment (Sand Placement)
Bid No. 14-6352

Item	Description	Unit	Quantity	Dollar Per Unit	Price
1	Mobilization/Demobilization	Lump Sum	1	\$ 155,000.00	\$ 155,000.00
2	Sand Placement (includes transport on beach)	Ton	78,678	\$ 5.40	\$ 424,861.20
3	Surveying (includes stakeout, pre-construction, post-construction, before and after placement surveys)	Lump Sum	1	\$ 95,000.00	\$ 95,000.00
4	Turbidity Monitoring	Lump Sum	1	\$ 9,000.00	\$ 9,000.00
5	Maintenance of Beach Traffic	Lump Sum	1	\$ 65,000.00	\$ 65,000.00
6	BID TOTAL				\$ 748,861.20

**MATERIAL MANUFACTURERS
THIS FORM MUST BE COMPLETED OR BID SHALL BE DEEMED NON-
RESPONSIVE**

All Bidders shall confirm by signature that they will provide the manufacturers and materials outlined in this Bid specifications, Exceptions (when equals are acceptable) may be requested by completing the Material Manufacturer Exception List below. If an exception for a manufacturer and/or material is proposed and listed below and is not approved by Engineer/Project Manager, Bidder shall furnish the manufacturer named in the specification. Acceptance of this form does not constitute acceptance of material proposed on this list.

Complete and sign section A OR B.

Section A (Acceptance of all manufactures and materials in Bid specifications)

On behalf of my firm, I confirm that we will use all manufacturers and materials as specifically outlined in the Bid specifications.

Company: Earth Tech Enterprises Inc.
Signature: [Handwritten Signature] Date: 10-14-14

Section B (Exception requested to Bid specifications manufacturers and materials)

	<u>EXCEPTION MATERIAL</u>	<u>EXCEPTION MANUFACTURER</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

Please insert additional pages as necessary.

Company: _____
Signature: _____ Date: _____

LIST OF MAJOR SUBCONTRACTORS
THIS LIST MUST BE COMPLETED OR BID MAY BE DEEMED NON-RESPONSIVE

The undersigned states that the following is a list of the proposed subcontractors for the major categories outlined in the requirements of the Bid specifications.

The undersigned acknowledges its responsibility for ensuring that the Subcontractors for the major categories listed herein are "qualified" (as defined in Ordinance 2013-69 and Section 15 of Instructions to Bidders) and meet all legal requirements applicable to and necessitated by the Contract Documents, including, but not limited to proper licenses, certifications, registrations and insurance coverage. The Owner reserves the right to disqualify any Bidder who includes non-compliant or non-qualified Subcontractors in its bid offer. Further, the Owner may direct the Successful Bidder to remove/replace any Subcontractor, at no additional cost to Owner, which is found to be non-compliant with this requirement either before or after the issuance of the Award of Contract by Owner. (Attach additional sheets as needed). Further, the undersigned acknowledges and agrees that promptly after the Award of Contract, and in accordance with the requirements of the Contract Documents, the Successful Bidder shall identify all Subcontractors it intends to use on the Project. The undersigned further agrees that all Subcontractors subsequently identified for any portion of work on this Project must be qualified as noted above.

Major Category of Work	Subcontractor and Address
1. Electrical	N/A
2. Mechanical	N/A
3. Plumbing	N/A
4. Site Work	N/A
5. Identify other subcontractors that represent more than 10% of price or that affect the critical path of the schedule	N/A

Company: Earth Tech Enterprises Inc.
 Signature: [Handwritten Signature] Date: 10-14-14

STATEMENT OF EXPERIENCE OF BIDDER

The Bidder is required to state below what work of similar magnitude completed within the last five years is a judge of its experience, skill and business standing and of its ability to conduct the work as completely and as rapidly as required under the terms of the Agreement.

	<u>Project and Location</u>	<u>Reference</u>
1.	SEE ATTACHED	
2.		
3.		
4.		
5.		
6.		

Company: EARTH TECH ENTERPRISES INC.
Signature: [Handwritten Signature] Date: 10-14-14

Earth Tech Enterprises Inc.
Environmental and Hydrologic Construction

October 27, 2014
 New Business 7-b
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Company	Year	Project	Contract Amount
American Marine Cont.	2010	Hideaway Beach Material (boulders) **Beach Grading, Tilling, Truck Haul To Beach	\$176,000.00
Audubon of Florida Contact: Jeanette Hobbs 305-289-9988	2009	Tower Road, Big Pine, Bird Habitat Restore	\$11,000.00
	2009	Carysfort Mangrove Restoration **Truck Haul In - 50,000 Tons	\$500,000.00
	2011	Castillo Pit Restoration	\$25,000.00
	2011	Chetkin Parcel Restoration	\$30,000.00
	2008-2013 2013	Port Bouganvillea Mangrove Park Restoration Carysfort Mangrove Restoration (50,000 tons)	\$300,000.00
C3TS Contact: Kate Skindizer 305-445-2900	2011	Dove Creek Wildlife Preserve	\$163,000.00
	2011	Lois Ryan Road Project	\$35,700.00
	2013	Port B	\$10,000.00
Centex Homes Contact: Dayna Berger 239-449-1072	2010	The Quarry (Breakwater Const., Beach Cleanup, Sand Install)	\$75,000.00
Charlotte Cnty Board of Commissioners Contact: Chuck Hobbs 941-743-1378	2008	Stump Pass Beach State Park Geo Tube Removal	\$48,500.00
City of Bonita Springs 239-949-6262	2011	Oak Creek Restoration **Dredge and Truck Haul	\$89,500.00
City of Marco Island Engineer Contact: Steve Foge 239-594-2021	2008	Hideaway Beach Shore Protection **Truck Haul: Rock To Beach	\$240,000.00
Coastal Marine	2011	Estero Island Beach Restoration	\$80,500.00
Collier County	2010	Doctor's Pass **Haul In: Conveyor to Beach	\$108,000.00
DN Higgins Contact: Dan Higgins 734-996-9500	2009	Curry Hammock State Park **Truck Haul In	\$750,000.00
Gunderboom	2005	Collier County Reef (Deliver Reef Rock) **5,000 Tons	\$350,000.00
	2007	Venice Reef (Supply and Deliver Reef Rock) **35,000 Tons	\$1,500,000.00

Company	Year	Project	Contract Amount
Habitat Lakes Community Development Contact: Christopher Pepin, Severn Trent 239-694-3310	2009	Lake Bank Regrade, Rip Rap and Restoration	\$110,000.00
Kyle Construction Contact: Charlie Abraham 239-643-7059	2013	Clam Pass Emergency Restoration	\$206,450.00
Lennar Homes Contact: Dave Truxton 239-278-1177	2009	Lake Bank Regrade, Rip Rap and Resoration	\$40,000.00
	2007	Lake Bank Reconstruction Rip Rap/Grade/Fabric	\$450,000.00
	2010	Heritage Bay Boat Ramps	\$42,000.00
		Heritage Bay Shoreline Restoration	\$600,000.00
Naples Cay	2000-07	Annual Contract 5 Acres Mangrove Trimming	\$65,000.00
Orchards Community	2011	Orchards Lake Bank Construction	\$183,000.00
Pulte Homes	2008	Island Walk, Venice, Lake Bank Restore	\$150,000.00
	2009	The Quarry, Lake Stabilization Geoweb	\$25,750.00
Severn Trent Contact: Christopher Pepin 239-694-3310	2010	Colonial Country Club Lakebank Restore	\$66,000.00
	2011	Colonial Country Club Lakebank Restore	\$18,000.00
Soil Tech Distributors (Collier County Beach Renourish) Contact: Bem Smith 239-261-0116	2002-2004	Parkshore/Hideaway	\$300,000.00
	2002	Key West Beach Renourishment	\$500,000.00
		Naples Beach/Doctor's Pass	\$700,000.00
		Vanderbilt Beach/Pelican Bay/Hideaway	\$500,000.00
U S Homes Contact: Russell Smith 239-278-1177	2004	Heritage Point (Beach Construction)	\$30,000.00
	2005	Heritage Cove (Beach Construction)	\$30,000.00
Williams Marine Contact: Dave Williams Engineer Contact: Ken Hummiston 239-594-2021		Keywadin Island (Supply and deliver rock for jetty)	\$125,000.00

TRENCH SAFETY ACT

Bidder acknowledges that included in the various items of the bid and in the Total Bid Price are costs for complying with the Florida Trench Safety Act (90-96, Laws of Florida) effective October 1, 1990. The Bidder further identifies the cost to be summarized below:

	Trench Safety Measure (Description)	Units of Measure (LF, SY)	Unit (Quantity)	Unit Cost	Extended Cost
1.	N/A	-	-	-	-
2.					
3.					
4.					
5.					
TOTAL				\$	0

Failure to complete the above may result in the Bid being declared non-responsive.

Company: Earth Tech Enterprises Inc
Signature: [Signature] Date: 10-15-14



Immigration Law Affidavit Certification

Solicitation: 14-6352 – Naples Beach Renourishment (Sand Placement)

This Affidavit is required and should be signed, notarized by an authorized principal of the firm and submitted with formal Invitations to Bid (ITB's) and Request for Proposals (RFP) submittals. Further, Vendors / Bidders are required to enroll in the E-Verify program, and provide acceptable evidence of their enrollment, at the time of the submission of the vendor's/bidder's proposal. Acceptable evidence consists of a copy of the properly completed E-Verify Company Profile page or a copy of the fully executed E-Verify Memorandum of Understanding for the company. **Failure to include this Affidavit and acceptable evidence of enrollment in the E-Verify program, may deem the Vendor / Bidder's proposal as non-responsive.**

Collier County will not intentionally award County contracts to any vendor who knowingly employs unauthorized alien workers, constituting a violation of the employment provision contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) of the Immigration and Nationality Act ("INA").

Collier County may consider the employment by any vendor of unauthorized aliens a violation of Section 274A (e) of the INA. Such Violation by the recipient of the Employment Provisions contained in Section 274A (e) of the INA shall be grounds for unilateral termination of the contract by Collier County.

Vendor attests that they are fully compliant with all applicable immigration laws (specifically to the 1986 Immigration Act and subsequent Amendment(s)) and agrees to comply with the provisions of the Memorandum of Understanding with E-Verify and to provide proof of enrollment in The Employment Eligibility Verification System (E-Verify), operated by the Department of Homeland Security in partnership with the Social Security Administration at the time of submission of the Vendor's / Bidder's proposal.

Company Name Earth Tech Enterprises Inc
Print Name Lisa Gehring Title VP
Signature [Signature] Date 10-15-14

State of Florida
County of Collier

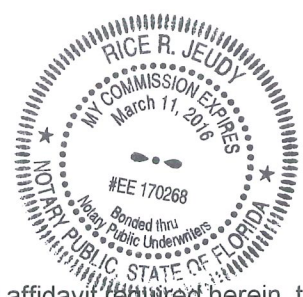
The foregoing instrument was signed and acknowledged before me this 15 day of October, 2014, by

Lisa Gehring who has produced Florida DL as identification.
(Print or Type Name) (Type of Identification and Number)

[Signature]
Notary Public Signature

RICE R. JEUDY
Printed Name of Notary Public

March 11, 2016
Notary Commission Number/Expiration



The signee of this Affidavit guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made.



**COLLIER COUNTY SOLICITATIONS SUBSTITUTE W – 9
 Request for Taxpayer Identification Number and Certification**

In accordance with the Internal Revenue Service regulations, Collier County is required to collect the following information for tax reporting purposes from individuals and companies who do business with the County (including social security numbers if used by the individual or company for tax reporting purposes). Florida Statute 119.071(5) require that the county notify you in writing of the reason for collecting this information, which will be used for no other purpose than herein stated. Please complete all information that applies to your business and return with your quote or proposal.

1. General Information (provide all information)

Taxpayer Name Earth Tech Enterprises Inc.
 (as shown on income tax return)
 Business Name _____
 (if different from taxpayer name)
 Address 5425 Golden Gate Pkwy #3 City Naples
 State Florida Zip 34116
 Telephone 239 774 1223 FAX 239 774 1227 Email lisa@earthtechenterprises.com

Order Information

Address SAME AS ABOVE
 City _____ State _____ Zip _____
 FAX _____
 Email _____

Remit / Payment Information

Address SAME AS ABOVE
 City _____ State _____ Zip _____
 FAX _____
 Email _____

2. Company Status (check only one)

<input type="checkbox"/> Individual / Sole Proprietor	<input checked="" type="checkbox"/> Corporation	<input type="checkbox"/> Partnership
<input type="checkbox"/> Tax Exempt (Federal income tax-exempt entity under Internal Revenue Service guidelines IRC 501 (c) 3)	<input type="checkbox"/> Limited Liability Company	
_____ Enter the tax classification (D = Disregarded Entity, C = Corporation, P = Partnership)		

3. Taxpayer Identification Number (for tax reporting purposes only)

Federal Tax Identification Number (TIN) 59-3679652
 (Vendors who do not have a TIN, will be required to provide a social security number prior to an award of the contract.)

4. Sign and Date Form

Certification: Under penalties of perjury, I certify that the information shown on this form is correct to my knowledge.

Signature [Signature] Date 10-15-14

October 27, 2014

Title Vice President

Phone Number 239-974-1223 ~~New Business 7-b~~
~~26 of 111~~

Upon notification that its Bid has been awarded, the Successful Bidder will execute the Agreement form attached to the Bidding Documents within ten (10) calendar days and deliver the Surety Bond or Bonds and Insurance Certificates as required by the Contract Documents. The bid security attached is to become the property of the Owner in the event the Agreement, Insurance Certificates and Bonds are not executed and delivered to Owner within the time above set forth, as liquidated damages, for the delay and additional expense to the Owner, it being recognized that, since time is of the essence, Owner will suffer financial loss if the Successful Bidder fails to execute and deliver to Owner the required Agreement, Insurance Certificates and Bonds within the required time period. In the event of such failure, the total amount of Owner's damages, will be difficult, if not impossible, to definitely ascertain and quantify. It is hereby agreed that it is appropriate and fair that Owner receive liquidated damages from the Successful Bidder in the event it fails to execute and deliver the Agreement, Insurance Certificates, and Bonds as required hereunder. The Successful Bidder hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of Owner's actual damages at the time of bidding if the Successful Bidder fails to execute and deliver the Agreement, Insurance Certificates, and Bonds in a timely manner.

Upon receipt of the Notice of Award, the undersigned proposes to commence work at the site within 5 calendar days from the commencement date stipulated in the written Notice to Proceed unless the Project Manager, in writing, subsequently notifies the Contractor of a modified (later) commencement date. The undersigned further agrees to substantially complete all work covered by this Bid within **thirty-four (34)** consecutive calendar days, computed by excluding the commencement date and including the last day of such period, and to be fully completed to the point of final acceptance by the Owner within **ten (7)** consecutive calendar days after Substantial Completion, computed by excluding commencement date and including the last day of such period.

Respectfully Submitted:

State of Florida
County of Collier

Lisa Gehring, Earth Tech Enterprises Inc., being first duly sworn on oath deposes and says that the Bidder on the above Bid is organized as indicated and that all statements herein made are made on behalf of such Bidder and that this deponent is authorized to make them.

Lisa Gehring, Earth Tech Enterprises Inc. also deposes and says that it has examined and carefully prepared its Bid from the Bidding Documents, including the Contract Drawings and Specifications and has checked the same in detail before submitting this Bid; that the statements contained herein are true and correct.

(a) Corporation

The Bidder is a corporation organized and existing under the laws of the State of Florida, which operates under the legal name of EARTH TECH Enterprises Inc., and the full names of its officers are as follows:

President Christopher Gehring

Secretary Lisa Gehring

Treasurer Lisa Gehring

Manager _____

The Secretary / Vice President is authorized to sign construction bids and contracts for the company by action of its Board of Directors taken February 14 2006, a ~~certified copy of which is hereto attached (strike out this last sentence if not applicable).~~

(b) Co-Partnership

The Bidder is a co-partnership consisting of individual partners whose full names are as follows:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The co-partnership does business under the legal name of:

(c) Individual

The Bidder is an individual whose full name is _____, and if operating under a trade name, said trade name is _____.

Complete for information contained in (a) Corporation, (b) Co-Partnership or (c) Individual from previous page.

DATED 10-15-14

Earth Tech Enterprises Inc
Legal entity

Kristine A. Fouty
Witness

BY: Lisa Gehring
Name of Bidder (Typed)

Karlson
Witness

[Signature]
Signature

VP
Title

STATE OF Florida

COUNTY OF Collier

The foregoing instrument was acknowledged before me this 15 day of Oct., 2014, by Lisa Gehring, as Vice President of Earth Tech Enterprises, a Florida corporation, on behalf of the corporation. He/she is personally known to me or has produced Florida DL as identification and did (did not) take an oath.

My Commission Expires:



[Signature]
(Signature of Notary)

NAME: Rice R. Judy
(Legibly Printed)

Notary Public, State of Florida
Commission No.: _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we EARTH TECH
ENTERPRISES, INC. (herein after called the Principal) and
INTERNATIONAL FIDELITY INSURANCE COMPANY,
(herein called the Surety), a corporation chartered and existing under the laws of the
State of NEW JERSEY with its principal offices in the city of NEWARK
and authorized to do business in the State of FLORIDA are held and
firmly bound unto the COLLIER COUNTY, FLORIDA
(hereinafter called the Owner), in the full and just sum of
5% OF BID dollars (\$ 5%)
good and lawful money of the United States of America, to be paid upon demand of the
Owner, to which payment well and truly to be made, the Principal and the Surety bind
themselves, their heirs, and executors, administrators, and assigns, jointly and severally
and firmly by these presents.

Whereas, the Principal is about to submit, or has submitted to the Owner, a Bid for
furnishing all labor, materials, equipment and incidentals necessary to furnish, install,
and fully complete the Work on the Project known as #14-6352:

**Naples Beach Renourishment (Sand Placement)
Bid No. 14-6352**

NOW, THEREFORE, if the Owner shall accept the Bid of the PRINCIPAL and the
PRINCIPAL shall enter into the required Agreement with the Owner and within ten days
after the date of a written Notice of Award in accordance with the terms of such Bid, and
give such bond or bonds in an amount of 100% the total Contract Amount as specified in
the Bidding Documents or Contract Documents with good and sufficient surety for the
faithful performance of the Agreement and for the prompt payment of labor, materials and
supplies furnished in the prosecution thereof or, in the event of the failure of the
PRINCIPAL to enter into such Agreement or to give such bond or bonds, and deliver to
Owner the required certificates of insurance, if the PRINCIPAL shall pay to the OBLIGEE
the fixed sum of \$ 5% OF BID noted above as liquidated damages, and not as a
penalty, as provided in the Bidding Documents, then this obligation shall be null and void,
otherwise to remain in full force and effect.

IN TESTIMONY Thereof, the Principal and Surety have caused these presents to be
duly signed and sealed this 15TH day of OCTOBER, 2014.

EARTH TECH ENTERPRISES, INC. _____ Principal
BY  _____ (Seal)
CHRISTOPHER GEHRING, PRESIDENT
INTERNATIONAL FIDELITY INSURANCE COMPANY _____ Surety
 _____ (Seal)
MATTHEW T SMITH, ATTORNEY IN FACT
Countersigned _____ NA
Local Resident Producing Agent for _____ NA
_____ NA

INQUIRIES: SMITH SURETY BONDS
10501 SIX MILE CYPRESS PKWY SUITE 110
FORT MYERS, FL 33966
239 560 0137

RESIDENT AGENT: MATTHEW T SMITH, E148192

THIS SHEET MUST BE SIGNED BY VENDOR

**BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA
Purchasing Department**

BIDDERS CHECK LIST

IMPORTANT: Please read carefully, sign in the spaces indicated and return with your Bid.

Bidder should check off each of the following items as the necessary action is completed:

1. The Bid has been signed.
2. The Bid prices offered have been reviewed.
3. The price extensions and totals have been checked.
4. Any required drawings, grant forms, descriptive literature, etc. have been included.
5. Any delivery information required is included.
6. Immigration Affidavit completed and the company's E-Verify profile page or memorandum of understanding
7. Certificate of Authority to Conduct Business in State of Florida
8. If required, the amount of Bid bond has been checked, and the Bid bond or cashier's check has been included.
9. Any addenda have been signed and included.
10. The mailing envelope has been addressed to:

Procurement Director
Collier County Government
Purchasing Department
3327 Tamiami Trail E
Naples FL 34112

11. The mailing envelope must be sealed and marked with:

**14-6352 - Naples Beach Renourishment (Sand Placement)
Bid Closing:10/15/2014**

12. The Bid will be mailed or delivered in time to be received no later than the specified opening date and time, otherwise Bid cannot be considered.

**ALL COURIER-DELIVERED BIDS MUST HAVE THE BID NUMBER
AND PROJECT NAME ON THE OUTSIDE OF THE COURIER PACKET**

Earth Tech Enterprises Inc
Bidder Name

Rick Akhry, VP
Signature & Title

Date: 10-14-14

CONSTRUCTION AGREEMENT

THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, ("Owner") hereby contracts with Earth Tech Enterprises, Inc. ("Contractor") of 5475 Golden Gate Pkwy., Suite 5, Naples, FL 34116 a Florida Corporation, authorized to do business in the State of Florida, to perform all work ("Work") in connection with Naples Beach Renourishment (Sand Placement), Bid No. 14-6352 ("Project"), as said Work is set forth in the Plans and Specifications prepared by Atkins North America, the Engineer and/or Architect of Record ("Design Professional") and other Contract Documents hereafter specified.

Owner and Contractor, for the consideration herein set forth, agree as follows:

Section 1. Contract Documents.

A. The Contract Documents consist of this Agreement, the Exhibits described in Section 6 hereof, the Legal Advertisement, the Bidding Documents and any duly executed and issued addenda, Change Orders, Work Directive Changes, Field Orders and amendments relating thereto. All of the foregoing Contract Documents are incorporated by reference and made a part of this Agreement (all of said documents including the Agreement sometimes being referred to herein as the "Contract Documents" and sometimes as the "Agreement" and sometimes as the "Contract"). A copy of the Contract Documents shall be maintained by Contractor at the Project site at all times during the performance of the Work.

B. Owner shall furnish to the Contractor one reproducible set of the Contract Documents and the appropriate number of sets of the Construction Documents, signed and sealed by the Design Professional, as are reasonably necessary for permitting.

Section 2. Scope of Work.

Contractor agrees to furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely, and fully perform and complete in a good and workmanlike manner the Work required by the Contract Documents.

Section 3. Contract Amount.

In consideration of the faithful performance by Contractor of the covenants in this Agreement to the full satisfaction and acceptance of Owner, Owner agrees to pay, or cause to be paid, to Contractor the following amount (herein "Contract Amount"), in accordance with the terms of this Agreement: **Seven Hundred and Forty-Eight Thousand Eight Hundred and Sixty-One Dollars and Twenty Cents (\$748,861.20).**

Section 4. Bonds.

A. Contractor shall provide Performance and Payment Bonds, in the form prescribed in Exhibit A, in the amount of 100% of the Contract Amount, the costs of

which are to be paid by Contractor. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall meet the requirements of the Department of the Treasury Fiscal Service, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies" circular. This circular may be accessed via the web at www.fms.treas.gov/c570/c570.html#certified. Should the Contract Amount be less than \$500,000, the requirements of Section 287.0935, F.S. shall govern the rating and classification of the surety.

B. If the surety for any bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the Contractor shall, within five (5) calendar days thereafter, substitute at its cost and expense another bond and surety, both of which shall be subject to the Owner's approval.

Section 5. Contract Time and Liquidated Damages.

A. Time of Performance.

Time is of the essence in the performance of the Work under this Agreement. The "Commencement Date" shall be established in the written Notice to Proceed to be issued by the Project Manager, as hereinafter defined. Contractor shall commence the Work within five (5) calendar days from the Commencement Date. No Work shall be performed at the Project site prior to the Commencement Date. Any Work performed by Contractor prior to the Commencement Date shall be at the sole risk of Contractor. Contractor shall achieve Substantial Completion within **thirty-four (34)** calendar days from the Commencement Date (herein "Contract Time"). The date of Substantial Completion of the Work (or designated portions thereof) is the date certified by the Design Professional when construction is sufficiently complete, in accordance with the Contract Documents, so Owner can occupy or utilize the Work (or designated portions thereof) for the use for which it is intended. Contractor shall achieve Final Completion within **seven (7)** calendar days after the date of Substantial Completion. Final Completion shall occur when the Agreement is completed in its entirety, is accepted by the Owner as complete and is so stated by the Owner as completed. As used herein and throughout the Contract Documents, the phrase "Project Manager" refers to the Owner's duly authorized representative and shall mean the Division Administrator or Department Director, as applicable, acting directly or through duly authorized representatives.

B. Liquidated Damages in General.

Owner and Contractor recognize that, since time is of the essence for this Agreement, Owner will suffer financial loss if Contractor fails to achieve Substantial Completion within the time specified above, as said time may be adjusted as provided for herein. In such event, the total amount of Owner's damages, will be difficult, if not impossible, to definitely ascertain and quantify. Should Contractor fail to achieve Substantial Completion within the number of calendar days established herein, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, **two thousand dollars**

(\$2,000.00) for each calendar day thereafter until Substantial Completion is achieved. Further, in the event Substantial Completion is reached, but the Contractor fails to reach Final Completion within the required time period, Owner shall also be entitled to assess and Contractor shall be liable for all actual damages incurred by Owner as a result of Contractor failing to timely achieve Final Completion. The Project shall be deemed to be substantially completed on the date the Project Manager (or at his/her direction, the Design Professional) issues a Certificate of Substantial Completion pursuant to the terms hereof. Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the Owner's actual damages at the time of contracting if Contractor fails to Substantially or Finally Complete the Work within the required time periods.

C. Computation of Time Periods.

When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday.

D. Determination of Number of Days of Default.

For all contracts, regardless of whether the Contract Time is stipulated in calendar days or working days, the Owner will count default days in calendar days.

E. Right of Collection.

The Owner has the right to apply any amounts due Contractor under this Agreement or any other agreement between Owner and Contractor, as payment on such liquidated damages due under this Agreement in Owner's sole discretion. Notwithstanding anything herein to the contrary, Owner retains its right to liquidated damages due under this Agreement even if Contractor, at Owner's election and in its sole discretion, is allowed to continue and to finish the Work, or any part of it, after the expiration of the Contract Time including granted time extensions.

F. Completion of Work by Owner.

In the event Contractor defaults on any of its obligations under the Agreement and Owner elects to complete the Work, in whole or in part, through another contractor or its own forces, the Contractor and its surety shall continue to be liable for the liquidated damages under the Agreement until Owner achieves Substantial and Final Completion of the Work. Owner will not charge liquidated damages for any delay in achieving Substantial or Final Completion as a result of any unreasonable action or delay on the part of the Owner.

G. Final Acceptance by Owner.

The Owner shall consider the Agreement complete when the Contractor has completed in its entirety all of the Work and the Owner has accepted all of the Work and notified the Contractor in writing that the Work is complete. Once the Owner has approved and

accepted the Work, Contractor shall be entitled to final payment in accordance with the terms of the Contract Documents.

H. **Recovery of Damages Suffered by Third Parties.**

Contractor shall be liable to Owner to the extent Owner incurs damages from a third party as a result of Contractor's failure to fulfill all of its obligations under the Contract Documents. Owner's recovery of any delay related damages under this Agreement through the liquidated damages does not preclude Owner from recovering from Contractor any other non-delay related damages that may be owed to it arising out of or relating to this Agreement.

Section 6. Exhibits Incorporated.

Exhibits Incorporated: The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement for Solicitation 14-6352 – Naples Beach Renourishment (Sand Placement).

- Exhibit A: Performance and Payment Bond Forms
- Exhibit B: Insurance Requirements
- Exhibit C: Release and Affidavit Form
- Exhibit D: Contractor Application for Payment Form
- Exhibit E: Change Order Form
- Exhibit F: Certificate of Substantial Completion Form
- Exhibit G: Final Payment Checklist
- Exhibit H: General Terms and Conditions
- Exhibit I: Supplemental Terms and Conditions
- Exhibit J: Technical Specifications
- Exhibit K: Permits
- Exhibit L: Standard Details (if applicable)
- Exhibit M: Plans and Specifications prepared by Atkins North America and identified as follows: Naples Beach Renourishment Project
100% Construction Drawings shown on Plan Sheets 1 through 33.
- Exhibit N: Contractor's List of Key Personnel
- Exhibit O: Project Timeline
- ITB #14-6352: Solicitation Document for Naples Beach Renourishment (Sand Placement)

Section 7. Notices

A. All notices required or made pursuant to this Agreement by the Contractor to the Owner shall be deemed duly served if delivered by U.S. Mail, E-mail or Facsimile, addressed to the following:

**Gary McAlpin, Manager
Coastal Zone Management
2800 North Horseshoe Drive
Naples, Florida 34104**

Tel: 239-252-2966 Fax: 239-252-2950
Email: garymcalpin@colliergov.net

B. All notices required or made pursuant to this Agreement by Owner to Contractor shall be made in writing and shall be deemed duly served if delivered by U.S. Mail, E-mail or Facsimile, addressed to the following:

Lisa Gehring, Vice President
Earth Tech Enterprises, Inc.
5475 Golden Gate Pkwy., Suite 5
Naples, FL 34116
Tel: 239-774-1223 Fax: 239-774-1227
Email: lisa@earthtechenterprises.com

C. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

Section 8. PUBLIC ENTITY CRIMES.

8.1 By its execution of this Contract, Construction Contractor acknowledges that it has been informed by Owner of the terms of Section 287.133(2)(a) of the Florida Statutes which read as follows:

"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 on a contract to provide any goods or services to a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real 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 in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

Section 9. Modification.

No modification or change to the Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

Section 10. Successors and Assigns.

Subject to other provisions hereof, the Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Agreement.

Section 11. Governing Law.

The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida.

Section 12. No Waiver.

The failure of the Owner to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

Section 13. Entire Agreement.

Each of the parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by the Agreement.

Section 14. Severability.

Should any provision of the Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

Section 15. Change Order Authorization.

The Project Manager shall have the authority on behalf of the Owner to execute all Change Orders and Work Directive Changes to the Agreement to the extent provided for under the Owner's purchasing ordinance and policies and accompanying administrative procedures.

Section 16. Construction.

Any doubtful or ambiguous language contained in this Agreement shall not be construed against the party who physically prepared this Agreement. The rule sometimes referred to as "fortius contra proferentum" (pursuant to which ambiguities in a contractual term which appears on its face to have been inserted for the benefit of one of the parties shall be construed against the benefited party) shall not be applied to the construction of this Agreement.

Section 17. Order of Precedence

In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Construction Agreement and the General Terms and Conditions shall take precedence over the terms of all other Contract Documents,

except the terms of any Supplemental Conditions shall take precedence over the Construction Agreement and the General Terms and Conditions. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Supplemental Conditions, if any, or the Construction Agreement and the General Terms and Conditions, the conflict shall be resolved by imposing the more strict or costly obligation under the Contract Documents upon the Contractor at Owner's discretion.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) indicated below.

CONTRACTOR:

Earth Tech Enterprises, Inc.

TWO WITNESSES:

FIRST WITNESS

Print Name

SECOND WITNESS

Print Name

By: _____

Print Name and Title

Date

Date: _____

ATTEST:

Dwight E. Brock, Clerk

BY: _____

OWNER:

BOARD OF COUNTY COMMISSIONERS OF
COLLIER COUNTY FLORIDA

BY: _____

Tom Henning
Chairman

Date

Approved as to Form and Legality:

Assistant County Attorney



Print Name



EXHIBIT A 1: PUBLIC PAYMENT BOND
14-6352 – Naples Beach Renourishment (Sand Placement)

Bond No.
Contract No. 14-6352

KNOW ALL MEN BY THESE PRESENTS: That _____,
_____, as Principal,
and _____, as
Surety, located at _____
(Business Address) are held and firmly bound to _____
as Obligee in the sum of _____
(\$_____) for the payment whereof we bind ourselves, our heirs, executors,
personal representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the ____ day of _____
20____, with Obligee for _____ in
_____ accordance with drawings and specifications, which contract is
incorporated by reference and made a part hereof, and is referred to herein as the Contract.
THE CONDITION OF THIS BOND is that if Principal:

Promptly makes payment to all claimants as defined in Section 255.05(1), Florida
Statutes, supplying Principal with labor, materials or supplies, used directly or indirectly
by Principal in the prosecution of the work provided for in the Contract, then this bond is
void; otherwise it remains in full force.

Any changes in or under the Contract and compliance or noncompliance with any
formalities connected with the Contract or the changes do not affect Sureties obligation
under this Bond.

The provisions of this bond are subject to the time limitations of Section 255.05(2). In
no event will the Surety be liable in the aggregate to claimants for more than the penal
sum of this Payment Bond, regardless of the number of suits that may be filed by
claimants.

IN WITNESS WHEREOF, the above parties have executed this instrument this _____
day of _____ 20____, the name of each party being affixed and these
presents duly signed by its under-signed representative, pursuant to authority of its
governing body.



Signed, sealed and delivered
in the presence of:

PRINCIPAL

Witnesses as to Principal

BY: _____
NAME: _____
ITS: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____
20__, by _____, as _____ of
_____, a _____ corporation, on behalf of the
corporation. He/she is personally known to me OR has produced _____ as
identification and did (did not) take an oath.

My Commission Expires:

(Signature of Notary)

NAME:

(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of _____
Commission No.: _____

ATTEST:

SURETY:

(Printed Name)

(Business Address)

(Authorized Signature)

Witnesses to Surety

(Printed Name)



OR

As Attorney in Fact
(Attach Power of Attorney)

Witnesses

(Printed Name)

(Business Address)

(Telephone Number)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as _____ of _____ Surety, on behalf of Surety. He/She is personally known to me OR has produced _____ as identification and who did (did not) take an oath.

My Commission Expires:

(Signature)

Name: _____
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of: _____
Commission No.: _____



EXHIBIT A 2: PUBLIC PERFORMANCE BOND
14-6352 – Naples Beach Renourishment (Sand Placement)

Bond No. _____
Contract No. 14-6352

KNOW ALL MEN BY THESE PRESENTS: That _____
_____, as Principal, and _____
_____, as Surety, located at

(Business Address) are held and firmly bound to
_____, as Obligee in the sum of

(\$ _____) for the payment whereof we bond ourselves, our heirs, executors,
personal representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the _____ day of
_____, 20____, with Obligee for

in accordance with drawings and specifications, which contract is incorporated by
reference and made a part hereof, and is referred to herein as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract;
and
2. Pays Obligee any and all losses, damages, costs and attorneys' fees that
Obligee sustains because of any default by Principal under the Contract, including, but
not limited to, all delay damages, whether liquidated or actual, incurred by Obligee; and
3. Performs the guarantee of all work and materials furnished under the Contract for
the time specified in the Contract, then this bond is void; otherwise it remains in full
force. Any changes in or under the Contract and compliance or noncompliance with
any formalities connected with the Contract or the changes do not affect Sureties
obligation under this Bond.

The Surety, for value received, hereby stipulates and agrees that no changes,
extensions of time, alterations or additions to the terms of the Contract or other work to
be performed hereunder, or the specifications referred to therein shall in anywise affect
its obligations under this bond, and it does hereby waive notice of any such changes,
extensions of time, alterations or additions to the terms of the Contract or to work or to
the specifications.

This instrument shall be construed in all respects as a common law bond. It is
expressly understood that the time provisions and statute of limitations under Section
255.05, Florida Statutes, shall not apply to this bond.



In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance Bond regardless of the number of suits that may be filed by Obligee.

IN WITNESS WHEREOF, the above parties have executed this instrument this _____ day of _____, 20____, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
in the presence of:

PRINCIPAL

BY: _____

Witnesses as to Principal

NAME: _____

ITS: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as _____ of _____, a _____ corporation, on behalf of the corporation. He/she is personally known to me OR has produced _____ as identification and did (did not) take an oath.

My Commission Expires:

(Signature)

Name: _____

(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of: _____

Commission No.: _____



ATTEST:

SURETY:

(Printed Name)

(Business Address)

(Authorized Signature)

Witnesses as to Surety

(Printed Name)

OR

As Attorney in Fact
(Attach Power of Attorney)

Witnesses

(Printed Name)

(Business Address)

(Telephone Number)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as _____ of _____, a _____ Surety, on behalf of Surety. He/She is personally known to me OR has produced _____ as identification and who did (did not) take an oath.

My Commission Expires:

(Signature)

Name:

(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of: _____
Commission No.: _____



EXHIBIT B: INSURANCE REQUIREMENTS

The Vendor shall at its own expense, carry and maintain insurance coverage from responsible companies duly authorized to do business in the State of Florida as set forth in EXHIBIT B of this solicitation. The Vendor shall procure and maintain property insurance upon the entire project, if required, to the full insurable value of the scope of work.

The County and the Vendor waive against each other and the County's separate Vendors, Contractors, Design Consultant, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. The Vendor and County shall, where appropriate, require similar waivers of subrogation from the County's separate Vendors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts.

Collier County shall be responsible for purchasing and maintaining its own liability insurance.

Certificates issued as a result of the award of this solicitation must identify "For any and all work performed on behalf of Collier County."

The General Liability Policy provided by Vendor to meet the requirements of this solicitation shall name Collier County, Florida, as an additional insured as to the operations of Vendor under this solicitation and shall contain a severability of interests provisions.

The Certificate Holder shall be named as Collier County Board of County Commissioners, OR, Board of County Commissioners in Collier County, OR Collier County Government, OR Collier County. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: For any and all work performed on behalf of Collier County.

The amounts and types of insurance coverage shall conform to the minimum requirements set forth in EXHIBIT B with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If Vendor has any self-insured retentions or deductibles under any of the below listed minimum required coverage, Vendor must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be Vendor's sole responsibility.

Coverage(s) shall be maintained without interruption from the date of commencement of the Work until the date of completion and acceptance of the scope of work by the County or as specified in this solicitation, whichever is longer.

The Vendor and/or its insurance carrier shall provide thirty (30) days written notice to the County of policy cancellation or non-renewal on the part of the insurance carrier or the Vendor. The Vendor shall also notify the County, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Vendor from its insurer and nothing contained herein shall relieve Vendor of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy to be provided by Vendor hereunder, Vendor shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.

Should at any time the Vendor not maintain the insurance coverage(s) required herein, the County may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverage(s) and charge the Vendor for such coverage(s) purchased. If Vendor fails to reimburse the County for such costs within thirty

(30) days after demand, the County has the right to offset these costs from any amount due Vendor under this Agreement or any other agreement between the County and Vendor. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage(s) purchased or the insurance company or companies used. The decision of the County to purchase such insurance coverage(s) shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the scope of work, the Vendor shall furnish to the County renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days after the expiration date on the certificate. Failure of the Vendor to provide the County with such renewal certificate(s) shall be considered justification for the County to terminate any and all contracts.

**Collier County Florida
 INSURANCE AND BONDING REQUIREMENTS**

Insurance / Bond Type	Required Limits
1. <input checked="" type="checkbox"/> Worker's Compensation	Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits and Requirements
1. <input checked="" type="checkbox"/> Employer's Liability	\$500,000 single limit per occurrence
2. <input checked="" type="checkbox"/> Commercial General Liability (Occurrence Form) patterned after the current ISO form	\$1,000,000 single limit per occurrence, \$2,000,000 aggregate for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.
3. <input checked="" type="checkbox"/> Indemnification	To the maximum extent permitted by Florida law, the Contractor/Vendor/Consultant shall indemnify and hold harmless Collier County, its officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor/Vendor/Consultant or anyone employed or utilized by the Contractor/Vendor/Consultant in the performance of this Agreement. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of Collier County.
4. <input checked="" type="checkbox"/> Automobile Liability	\$ 1,000,000 Each Occurrence; Bodily Injury & Property Damage, Owned/Non-owned/Hired; Automobile Included
4. <input type="checkbox"/> Other insurance as noted:	<input type="checkbox"/> Watercraft \$ _____ Per Occurrence <input type="checkbox"/> United States Longshoreman's and Harborworker's Act coverage shall be maintained where applicable to the completion of the work. \$ _____ Per Occurrence <input type="checkbox"/> Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work. \$ _____ Per Occurrence <input type="checkbox"/> Aircraft Liability coverage shall be carried in limits of not less than \$5,000,000 each occurrence if applicable to the completion of the Services under this Agreement. \$ _____ Per Occurrence <input type="checkbox"/> Pollution \$ _____ Per Occurrence <input type="checkbox"/> Professional Liability \$ _____ Per Occurrence <ul style="list-style-type: none"> • \$1,000,000 each claim and in the aggregate • \$2,000,000 each claim and in the aggregate <input type="checkbox"/> Project Professional Liability \$ _____ Per Occurrence <input type="checkbox"/> Valuable Papers Insurance \$ _____ Per Occurrence



6. Bid bond Shall be submitted with proposal response in the form of certified funds, cashiers' check or an irrevocable letter of credit, a cash bond posted with the County Clerk, or proposal bond in a sum equal to 5% of the cost proposal. All checks shall be made payable to the Collier County Board of County Commissioners on a bank or trust company located in the State of Florida and insured by the Federal Deposit Insurance Corporation.
7. Performance and Payment Bonds For projects in excess of \$200,000, bonds shall be submitted with the executed contract by Proposers receiving award, and written for 100% of the Contract award amount, the cost borne by the Proposer receiving an award. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall be rated as "A-" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holders' surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038.
8. Vendor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Vendor shall provide County with certificates of insurance meeting the required insurance provisions.
9. Collier County must be named as "ADDITIONAL INSURED" on the Insurance Certificate for Commercial General Liability where required.
10. The Certificate Holder shall be named as Collier County Board of County Commissioners, OR, Board of County Commissioners in Collier County, OR Collier County Government, OR Collier County. The Certificates of Insurance must state the Contract Number, or Project Number, or specific Project description, or must read: For any and all work performed on behalf of Collier County.
11. Thirty (30) Days Cancellation Notice required.

Vendor's Insurance Statement

We understand the insurance requirements of these specifications and that the evidence of insurability may be required within five (5) days of the award of this solicitation.

Name of Firm Earth Tool Enterprises Inc. Date 10-14-14
Vendor Signature *[Signature]*
Print Name Lisa Gehring
Insurance Agency FCCI
Agent Name Matt Smith Telephone Number 560-0137



EXHIBIT C: RELEASE AND AFFIDAVIT FORM

COUNTY OF COLLIER)
STATE OF FLORIDA)

Before me, the undersigned authority, personally appeared _____
_____ who after being duly sworn, deposes and says:

(1) In accordance with the Contract Documents and in consideration of \$ _____ paid,
_____ ("Contractor") releases and waives for itself and it's subcontractors,
material-men, successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort,
against the Board of County Commissioners of Collier County, Florida, relating in any way to the performance of the
Agreement between Contractor and Owner dated _____, 20 _____ for the period from
_____ to _____, excluding all retainage withheld and any pending claims or
disputes as expressly specified as follows: _____.

(2) Contractor certifies for itself and its subcontractors, material-men, successors and assigns, that all charges for
labor, materials, supplies, lands, licenses and other expenses for which Owner might be sued or for which a lien or a
demand against any payment bond might be filed, have been fully satisfied and paid.

(3) To the maximum extent permitted by law, Contractor agrees to indemnify, defend and save harmless Owner from
all demands or suits, actions, claims of liens or other charges filed or asserted against the Owner arising out of the
performance by Contractor of the Work covered by this Release and Affidavit.

(4) This Release and Affidavit is given in connection with Contractor's [monthly/final] Application for Payment No.
_____.

CONTRACTOR

BY: _____

ITS: _____ President

DATE: _____

Witnesses

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20 _____, by
_____, as _____ of _____, a
_____ corporation, on behalf of the corporation. He/she is personally known to me or has produced
_____ as identification and did (did not) take an oath.

My Commission Expires:

(Signature of Notary)

NAME:

(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of _____
Commissioner No.: _____



EXHIBIT D: FORM OF CONTRACT APPLICATION FOR PAYMENT

_____ (County Project Manager) Bid No. _____
 _____ (County Department) Project No. _____
 Collier County Board of County Commissioners (the OWNER) or Purchase Order No. _____
 Collier County Water-Sewer District (the OWNER) Application Date _____

FROM: _____ (Contractor's Representative) Payment Application No. _____
 _____ (Contractor's Name) for Work accomplished through the Date: _____
 _____ (Contractor's Address) _____

RE: _____ (Project Name)

Original Contract Time: _____ Original Contract Price: \$ _____
 Revised Contract Time: _____ Total Change Orders to Date \$ _____
 Revised Contract Amount \$ _____

Retainage @ 10% thru [insert date] \$ _____
 Retainage @ ___% after [insert date] \$ _____ =

Total value of Work Completed and stored to Date \$ _____
 Less Retainage \$ _____
 Total Earned Less Retainage \$ _____
 Less previous payment (s) \$ _____

Percent Work completed to Date: _____ %
 Percent Contract Time completed to Date _____ %

AMOUNT DUE THIS APPLICATION: \$ _____

Liquidated Damages to be Accrued \$ _____

Remaining Contract Balance \$ _____

ATTACH SCHEDULE OF VALUES AND ACCOMPANYING DOCUMENTATION TO THIS APPLICATION

CONTRACTOR'S CERTIFICATION: The undersigned CONTRACTOR certifies that: (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied to discharge in full all obligations of CONTRACTOR incurred in connection with Work covered by prior Applications for Payment numbered 1 through _____ inclusive; (2) title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all liens, claims, security interests and encumbrances (except such as covered by Bond acceptable to OWNER); (3) all amounts have been paid for work which previous payments were issued and received from the OWNER and that current payment is now due; and (4) CONTRACTOR has only included amounts in this Application for Payment properly due and owing and CONTRACTOR has not included within the above referenced amount any claims for unauthorized or changed Work that has not been properly approved by Owner in writing and in advance of such Work.

By CONTRACTOR: _____ (Contractor's Name)
 _____ (Signature) DATE: _____
 _____ (Type Name & Title)
 (shall be signed by a duly authorized representative of CONTRACTOR)

Payment to the CONTRACTOR for the above AMOUNT DUE THIS APPLICATION is recommended:

By Design Professional : _____ (DP's Name)
 _____ (Signature) DATE: _____
 _____ (Type Name & Title)

Payment to the CONTRACTOR for the above AMOUNT DUE THIS APPLICATION is approved:

By OWNER'S Project Manager: _____ (Signature) DATE: _____
 _____ (Type Name and Title)



EXHIBIT D (Continued)													
SCHEDULE OF VALUES													
Project Name:		Project Number:			Date:		Period To:						
ITEM NUMBER	DESCRIPTION	SCHEDULED VALUE	WORK COMPLETED		STORED MATERIALS	TOTAL COMPLETED & STORED TO DATE	PERCENT COMPLETE	BALANCE TO FINISH	10% RETAINAGE	% RETAINAGE (reduced rate)	TOTAL RETAINAGE WITHHELD		
			PREVIOUS APPLICATIONS THRU DATE	SINCE DATE								THIS PERIOD	
TOTALS													
* Explanation for the two columns under Previous Applications: The Thru Date is where you will place all information until the contract is complete unless a release or reduction of retainage issue comes into play. If this happens, all information up to the date of the % change in retainage is placed in the Thru Date column. Information after that date is placed in the Since Date column. This states what has happened since the change in retainage.													



Stored Materials Record

Formula: $A + B - C - D = E$

Date	Description	Supplier	Invoice Number	A Previously Received	B Received This Period	C Previously Installed	D Installed This Period	E Balance To Install

EXHIBIT E: CHANGE ORDER

TO: _____ **FROM: Collier County Government**
Project Name: _____ Construction Agreement Dated: _____
Bid No. : _____
Change Order No.: _____ Date: _____

Change Order Description

Original Agreement Amount \$ _____
Sum of previous Change Orders Amount \$ _____
This Change Order Amount \$ _____
Revised Agreement Amount \$ _____

Original Contract Time in calendar days _____
Adjusted number of calendar days due to previous Change Orders _____
This Change Order adjusted time is _____
Revised Contract Time in calendar days _____
Original Notice to Proceed Date _____
Completion date based on original Contract Time _____
Revised completion date _____

Contractor's acceptance of this Change Order shall constitute a modification to the Agreement and will be performed subject to all the same terms and conditions as contained in the Agreement, as if the same were repeated in this acceptance. The adjustments, if any, to the Agreement shall constitute a full and final settlement of any and all claims of the Contractor arising out of, or related to, the change set forth herein, including claims for impact and delay costs.

Prepared by: _____ Date: _____
Project Manager

Recommended by: _____ Date: _____
Design Professional

Accepted by: _____ Date: _____
Contractor

Approved by: _____ Date: _____
Department Director

Approved by: _____ Date: _____
Division Administrator

Approved by: _____ Date: _____
Purchasing Department

Authorized by _____ Date: _____



Director

(For use by Owner: Fund _____ Cost Center: _____ Object Code: _____ Project
Number: _____)

EXHIBIT F: CERTIFICATE OF SUBSTANTIAL COMPLETION

OWNER'S Project No. _____ Design Professional's Project No. _____
PROJECT:

CONTRACTOR

Contract For
Contract Date

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

To _____
OWNER

And
To _____

Substantial Completion is the state in the progress of the Work when the Work (or designated portion) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR AND DESIGN PROFESSIONAL, and that Work is hereby declared to be substantially complete in accordance with the requirements of the Contract Documents on:

DATE OF SUBSTANTIAL COMPLETION

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within _____ days of the above date of Substantial Completion.



The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as follows:

RESPONSIBILITIES:

OWNER: _____

CONTRACTOR _____

The following documents are attached to and made a part of this Certificate:

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR'S obligation to complete the Work in accordance with the Contract Documents.

Executed by Design Professional on _____, 20

Design Professional

By: _____
Type Name and Title

CONTRACTOR accepts this Certificate of Substantial Completion on _____,
20

CONTRACTOR

By: _____
Type Name and Title

OWNER accepts this Certificate of Substantial Completion on _____, 20

OWNER

By: _____
Type Name and Title



EXHIBIT G: FINAL PAYMENT CHECKLIST

Bid No.: _____ Project No.: _____ Date: _____
 20
 Contractor: _____

The following items have been secured by the _____
 for the Project known as _____

 and have been reviewed and found to comply with the requirements of the Contract Documents.

Original Contract Amount: _____ Final Contract Amount: _____

Commencement Date: _____

Substantial Completion Time as set forth in the Agreement: _____ Calendar Days.
 Actual Date of Substantial Completion: _____.

Final Completion Time as set forth in the Agreement: _____ Calendar Days.
 Actual Final Completion Date: _____.

YES	NO	
_____	_____	1. All Punch List items completed on _____
_____	_____	2. Warranties and Guarantees assigned to Owner (attach to this form).
_____	_____	3. Effective date of General one year warranty from Contractor is: _____
_____	_____	4. 2 copies of Operation and Maintenance manuals for equipment and system submitted (list manuals in attachment to this form).
_____	_____	5. As-Built drawings obtained and dated: _____
_____	_____	6. Owner personnel trained on system and equipment operation.
_____	_____	7. Certificate of Occupancy No.: _____ issued on _____ (attach to this form).
_____	_____	8. Certificate of Substantial Completion issued on _____
_____	_____	9. Final Payment Application and Affidavits received from Contractor on: _____
_____	_____	10. Consent of Surety received on _____
_____	_____	11. Operating Department personnel notified Project is in operating phase.
_____	_____	12. All Spare Parts or Special Tools provided to Owner: _____
_____	_____	13. Finished Floor Elevation Certificate provided to Owner: _____
_____	_____	14. Other: _____

If any of the above is not applicable, indicate by N/A. If NO is checked for any of the above, attach explanation.

Acknowledgments:

By Contractor: _____ (Company Name)
 _____ (Signature)
 _____ (Typed Name & Title)

By Design
Professional:

(Firm Name)
(Signature)
(Typed Name & Title)

By Owner:

(Department Name)
(Signature)
(Name & Title)



EXHIBIT H: GENERAL TERMS AND CONDITIONS

1. INTENT OF CONTRACT DOCUMENTS.

1.1 It is the intent of the Contract Documents to describe a functionally complete Project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words which have a well known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in effect at the time the Work is performed, except as may be otherwise specifically stated herein.

1.2 If before or during the performance of the Work Contractor discovers a conflict, error or discrepancy in the Contract Documents, Contractor immediately shall report same to the Project Manager in writing and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from the Project Manager; said interpretation or clarification from the Project Manager may require Contractor to consult directly with Design Professional or some other third party, as directed by Project Manager. Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing any portion of the Work.

1.3 Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts, or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, Contractor shall be required to comply with the provision which is the more restrictive or stringent requirement upon the Contractor, as determined by the Project Manager. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

2. INVESTIGATION AND UTILITIES.

2.1 Subject to Section 2.3 below, Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials;

availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance. The failure of Contractor to acquaint itself with any applicable conditions shall not relieve Contractor from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

2.2 Contractor shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project site, said roadways, railways, drainage facilities and utilities being referred to in this Sub-Section 2.2 as the "Utilities". Contractor shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Contractor shall schedule and coordinate its Work around any such relocation or temporary service interruption. Contractor shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work. The Contractor is responsible for coordinating all other utility work so as to not interfere with the prosecution of the Work (except those utilities to be coordinated by the Owner as may be expressly described elsewhere in the Contract Documents).

2.3 Notwithstanding anything in the Contract Documents to the contrary, if conditions are encountered at the Project site which are (i) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (ii) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, and which reasonably should not have been discovered by Contractor as part of its scope of site investigative services required pursuant to the terms of the Contract Documents, then Contractor shall provide Owner with prompt written notice thereof before conditions are disturbed and in no event later than three (3) calendar days after first observance of such conditions. Owner and Design Professional shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, Owner will acknowledge and agree to an equitable adjustment to Contractor's compensation or time for performance, or both, for such Work. If Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents or not of an unusual nature or should have been discovered by Contractor as part of its investigative services, and that no change in the terms of the Agreement is justified, Owner shall so notify Contractor in writing, stating its reasons. Claims by Contractor in opposition to such determination by Owner must be made within seven (7) calendar days after Contractor's receipt of Owner's written determination notice. If Owner and Contractor cannot agree on an adjustment to Contractor's cost or time of performance, the dispute resolution procedure set forth in the Contract Documents shall be complied with by the parties.

3. SCHEDULE.

3.1 The Contractor, within ten (10) calendar days after receipt of the Notice of Award, shall prepare and submit to Project Manager, for their review and approval, a progress schedule for the Project (herein "Progress Schedule"). The Progress Schedule shall relate to all Work required by the Contract Documents, and shall utilize the Critical Path method of scheduling and shall provide for expeditious and practicable execution of the Work within the Contract Time. The Progress Schedule shall indicate the dates for starting and completing the various stages of the Work.

3.2 The Progress Schedule shall be updated monthly by the Contractor. All monthly updates to the Progress Schedule shall be subject to the Project Manager's review and approval. Contractor shall submit the updates to the Progress Schedule with its monthly Applications for Payment noted below. The Project Manager's review and approval of the submitted Progress Schedule updates shall be a condition precedent to the Owner's obligation to pay Contractor.

3.3 All work under this Agreement shall be performed in accordance with the requirements of all Collier County Noise Ordinances then in effect. Unless otherwise specified, work will generally be limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No work shall be performed outside the specified hours without the prior approval of the Project Manager.

4. PROGRESS PAYMENTS.

4.1 Prior to submitting its first monthly Application for Payment, Contractor shall submit to Project Manager, for their review and approval, a schedule of values based upon the Contract Price, listing the major elements of the Work and the dollar value for each element. After its approval by the Project Manager, this schedule of values shall be used as the basis for the Contractor's monthly Applications for Payment. This schedule shall be updated and submitted each month along with a completed copy of the Application for Payment form signed by the Contractor's authorized representative and attached to the Agreement as Exhibit D.

4.2 Prior to submitting its first monthly Application for Payment, Contractor shall provide to the Project Manager the list of its Subcontractors and materialmen submitted with its Bid showing the work and materials involved and the dollar amount of each subcontract and purchase order. Contractor acknowledges and agrees that any modifications to the list of Subcontractors submitted with Contractor's Bid and any subsequently identified Subcontractors are subject to Owner's prior written approval. The first Application for Payment shall be submitted no earlier than thirty (30) days after the Commencement Date. Notwithstanding anything herein to the contrary, if approved by Owner in its sole discretion, Contractor may submit its invoice for any required Payment and Performance Bonds prior to the first Application of Payment provided that Contractor has furnished Owner certified copies of the receipts evidencing the premium paid by Contractor for the bonds.

4.3 Contractor shall submit all Applications for Payment to Bryan Flynn, Atkins Global, located at 4030 West Scout Blvd, Suite 700, Tampa, FL 33607.

4.4 Unless expressly approved by Owner in advance and in writing, said approval at Owner's sole discretion, Owner is not required to make any payment for materials or equipment that have not been incorporated into the Project. If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site or at another location, and such payment and storage have been agreed to by Owner in writing, the Application for Payment also shall be accompanied by a bill of sale, invoice or other documentation warranting that the Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which shall be subject to the Owner's satisfaction. Thereafter, with each Application for Payment, Contractor also shall complete and submit to Owner as part of its Application for Payment, the Stored Materials Record attached hereto and made a part hereof as Exhibit D.

4.5 Contractor shall submit six (6) copies of its monthly Application for Payment to the Project Manager or his or her designee, as directed by Owner (which designee may include the Design Professional). After the date of each Application for Payment is stamped as received and within the timeframes set forth in Section 218.735 F.S., the Project Manager, or Design Professional, shall either: (1) Indicate its approval of the requested payment; (2) indicate its approval of only a portion of the requested payment, stating in writing its reasons therefore; or (3) return the Application for Payment to the Contractor indicating, in writing, the reason for refusing to approve payment. Payments of proper invoices in the amounts approved shall be processed and paid in accordance with Section 218.735, F.S. and the administrative procedures established by the County's Purchasing Department and the Clerk of Court's Finance Department respectively.

In the event of a total denial by Owner and return of the Application for Payment by the Project Manager, the Contractor may make the necessary corrections and re-submit the Application for Payment. The Owner shall, within ten (10) business days after the Application for Payment is stamped and received and after Project Manager approval of an Application for Payment, pay the Contractor the amounts so approved.

4.6 Owner shall retain ten percent (10%) of the gross amount of each monthly payment request or ten percent (10%) of the portion thereof approved by the Project Manager for payment, whichever is less. Such sum shall be accumulated and not released to Contractor until final payment is due unless otherwise agreed to by the Owner in accordance with Florida Statute 255.078. The Project Manager shall have the discretion to establish, in writing, a schedule to periodically reduce the percentage of cumulative retainage held through out the course of the Project schedule. Owner shall reduce the amount of the retainage withheld on each payment request subsequent to fifty percent (50%) completion subject to the guidelines set forth in Florida Statute 255.078 and as set forth in the Owner's purchasing ordinance and policies.

4.7 Monthly payments to Contractor shall in no way imply approval or acceptance of Contractor's Work.

4.8 Each Application for Payment, subsequent to the first pay application, shall be accompanied by a Release and Affidavit, in the form attached as Exhibit C, acknowledging Contractor's receipt of payment in full for all materials, labor, equipment and other bills that are then due and payable by Owner with respect to the current Application for Payment. Further, to the extent directed by Owner and in Owner's sole discretion, Contractor shall also submit a Release and Affidavit from each Subcontractor, sub-subcontractor, or supplier in the form attached as Exhibit C acknowledging that each Subcontractor, sub-subcontractor or supplier has been paid in full through the previous month's Application for Payment. The Owner shall not be required to make payment until and unless these affidavits are furnished by Contractor.

4.9 Contractor agrees and understands that funding limitations exist and that the expenditure of funds must be spread over the duration of the Project at regular intervals based on the Contract Amount and Progress Schedule. Accordingly, prior to submitting its first monthly Application for Payment, Contractor shall prepare and submit for Project Manager's review and approval, a detailed Project Funding Schedule, which shall be updated as necessary and approved by Owner to reflect approved adjustments to the Contract Amount and Contract Time. No voluntary acceleration or early completion of the Work shall modify the time of payments to Contractor as set forth in the approved Project Funding Schedule.

4.10 Notwithstanding anything in the Contract Documents to the contrary, Contractor acknowledges and agrees that in the event of a dispute concerning payments for Work performed under this Agreement, Contractor shall continue to perform the Work required of it under this Agreement pending resolution of the dispute provided that Owner continues to pay Contractor all amounts that Owner does not dispute are due and payable.

4.11 Payments will be made for services furnished, delivered, and accepted, upon receipt and approval of invoices submitted on the date of services or within six (6) months after completion of contract. Any untimely submission of invoices beyond the specified deadline period is subject to non-payment under the legal doctrine of "laches" as untimely submitted. Time shall be deemed of the essence with respect to the timely submission of invoices under this agreement.

4.12 The County may, at its discretion, use VISA/MASTER card credit network as a payment vehicle for goods and/or services purchased as a part of this contract. The County may not accept any additional surcharges (credit card transaction fees) as a result of using the County's credit card for transactions relating to this solicitation.

5. PAYMENTS WITHHELD.

5.1 The Project Manager may decline to approve any Application for Payment, or portions thereof, because of subsequently discovered evidence or subsequent

inspections that reveal non-compliance with the Contract Documents. The Project Manager may nullify the whole or any part of any approval for payment previously issued and Owner may withhold any payments otherwise due Contractor under this Agreement or any other agreement between Owner and Contractor, to such extent as may be necessary in the Owner's opinion to protect it from loss because of:

(a) Defective Work not remedied; (b) third party claims filed or reasonable evidence indicating probable filing of such claims; (c) failure of Contractor to make payment properly to subcontractors or for labor, materials or equipment; (d) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount; (e) reasonable indication that the Work will not be completed within the Contract Time; (f) unsatisfactory prosecution of the Work by the Contractor; or (g) any other material breach of the Contract Documents by Contractor.

5.2 If any conditions described in 5.1. are not remedied or removed, Owner may, after three (3) days written notice, rectify the same at Contractor's expense. Provided, however, in the event of an emergency, Owner shall not be required to provide Contractor any written notice prior to rectifying the situation at Contractor's expense. Owner also may offset against any sums due Contractor the amount of any liquidated or non-liquidated obligations of Contractor to Owner, whether relating to or arising out of this Agreement or any other agreement between Contractor and Owner.

5.3 In instances where the successful contractor may owe debts (including, but not limited to taxes or other fees) to Collier County and the contractor has not satisfied nor made arrangement to satisfy these debts, the County reserves the right to off-set the amount owed to the County by applying the amount owed to the vendor or contractor for services performed or for materials delivered in

6. FINAL PAYMENT.

6.1 Owner shall make final payment to Contractor in accordance with Section 218.735, F.S. and the administrative procedures established by the County's Purchasing Department and the Clerk of Court's Finance Department after the Work is finally inspected and accepted by Project Manager as set forth with Section 20.1 herein, provided that Contractor first, and as an explicit condition precedent to the accrual of Contractor's right to final payment, shall have furnished Owner with a properly executed and notarized copy of the Release and Affidavit attached as Exhibit C, as well as, a duly executed copy of the Surety's consent to final payment and such other documentation that may be required by the Contract Documents and the Owner. Prior to release of final payment and final retainage, the Contractor's Representative and the Project Manager shall jointly complete the Final Payment Checklist, a representative copy of which is attached to this Agreement as Exhibit G.

6.2 Contractor's acceptance of final payment shall constitute a full waiver of any and all claims by Contractor against Owner arising out of this Agreement or otherwise relating to the Project, except those previously made in writing in accordance with the requirements of the Contract Documents and identified by Contractor as unsettled in its

final Application for Payment. Neither the acceptance of the Work nor payment by Owner shall be deemed to be a waiver of Owner's right to enforce any obligations of Contractor hereunder or to the recovery of damages for defective Work not discovered by the Design Professional or Project Manager at the time of final inspection.

7. SUBMITTALS AND SUBSTITUTIONS.

7.1 Contractor shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Contractor shall submit all such materials at its own expense and in such form as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof.

7.2 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by Owner if sufficient information is submitted by Contractor to allow the Owner to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Owner from anyone other than Contractor and all such requests must be submitted by Contractor to Project Manager within thirty (30) calendar days after Notice of Award is received by Contractor, unless otherwise mutually agreed in writing by Owner and Contractor.

7.3 If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make application to the Project Manager for acceptance thereof, certifying that the proposed substitute shall adequately perform the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Project Manager in evaluating the proposed substitute. The Project Manager may require Contractor to furnish at Contractor's expense additional data about the proposed substitute.

7.4 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Contractor may furnish or utilize a

substitute means, method, sequence, technique or procedure of construction acceptable to the Project Manager, if Contractor submits sufficient information to allow the Project Manager to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the Project Manager shall be the same as those provided herein for substitute materials and equipment.

7.5 The Project Manager shall be allowed a reasonable time within which to evaluate each proposed substitute and, if need be, to consult with the Design Professional. No substitute will be ordered, installed or utilized without the Project Manager's prior written acceptance which shall be evidenced by a Change Order, a Work Directive Change, a Field Order or an approved Shop Drawing. The Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. The Project Manager will record time required by the Project Manager and the Project Manager's consultants in evaluating substitutions proposed by Contractor and making changes in the Contract Documents occasioned thereby. Whether or not the Owner accepts a proposed substitute, Contractor shall reimburse Owner for the charges of the Design Professional and the Design Professional's consultants for evaluating each proposed substitute.

8. DAILY REPORTS, SIGNED AND SEALED AS-BUILTS AND MEETINGS.

8.1 Unless waived in writing by Owner, Contractor shall complete and submit to Project Manager on a weekly basis a daily log of the Contractor's work for the preceding week in a format approved by the Project Manager. The daily log shall document all activities of Contractor at the Project site including, but not limited to, the following:

8.1.1 Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the Project site, and any other weather conditions which adversely affect the Work;

8.1.2 Soil conditions which adversely affect the Work;

8.1.3 The hours of operation by Contractor's and Sub-Contractor's personnel;

8.1.4 The number of Contractor's and Sub-Contractor's personnel present and working at the Project site, by subcontract and trade;

8.1.5 All equipment present at the Project site, description of equipment use and designation of time equipment was used (specifically indicating any down time);

8.1.6 Description of Work being performed at the Project site;

8.1.7 Any unusual or special occurrences at the Project site;

8.1.8 Materials received at the Project site;

8.1.9 A list of all visitors to the Project

8.1.10 Any problems that might impact either the cost or quality of the Work or the time of performance.

The daily log shall not constitute nor take the place of any notice required to be given by Contractor to Owner pursuant to the Contract Documents.

8.2 Contractor shall maintain in a safe place at the Project site one record copy of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Work Directive Changes and Field Orders, as well as all written interpretations and clarifications issued by the Design Professional, in good order and annotated to show all changes made during construction. The annotated drawings shall be continuously updated by the Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Work Directive Changes and Field Orders, and all concealed and buried installations of piping, conduit and utility services. All buried and concealed items, both inside and outside the Project site, shall be accurately located on the annotated drawings as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The annotated drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color. The "As-Built" record documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to the Project Manager or Design Professional for reference. Upon completion of the Work and as a condition precedent to Contractor's entitlement to final payment, these "As-Built" record documents, samples and shop drawings shall be delivered to Project Manager by Contractor for Owner.

8.3 Contractor shall keep all records and supporting documentation, pursuant to F. S. 119.0701 (2(a) – (d) and (3), which concern or relate to the Work hereunder for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed or such longer period as may be required by law, whichever is later. Owner, or any duly authorized agents or representatives of Owner, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the document retention period noted above; provided, however, such activity shall be conducted only during normal business hours.

9. CONTRACT TIME AND TIME EXTENSIONS.

9.1 Contractor shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and material-men, as well as coordinating its Work with all work of others at the Project Site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Contractor. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under



the Contract Documents, and the coordination of Owner's suppliers and contractors as set forth in Paragraph 12.2. herein.

9.2 Should Contractor be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Contractor, and not due to its fault or neglect, including but not restricted to acts of Nature or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes or lockouts, Contractor shall notify the Owner in writing within forty-eight (48) hours after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Contractor may have had to request a time extension.

9.3 No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which Owner may be responsible, in whole or in part, shall relieve Contractor of its duty to perform or give rise to any right to damages or additional compensation from Owner. Contractor expressly acknowledges and agrees that it shall receive no damages for delay. Contractor's sole remedy, if any, against Owner will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion.

9.4 In no event shall any approval by Owner authorizing Contractor to continue performing Work under this Agreement or any payment issued by Owner to Contractor be deemed a waiver of any right or claim Owner may have against Contractor for delay damages hereunder.

10. CHANGES IN THE WORK.

10.1 Owner shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, Contractor shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or as expressly set forth herein, no addition or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to the Contractor for any increased compensation without such written order. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally. Any alleged changes must be approved by Owner in writing prior to starting such items. Owner will not be responsible for the costs of any changes commenced without Owner's express prior written approval. Failure to obtain such prior written approval for any changes will be deemed: (i) a waiver of any claim by Contractor for such items and (ii) an admission by Contractor that such items are in fact not a change but rather are part of the Work required of Contractor hereunder.

10.2 A Change Order, in the form attached as Exhibit E to this Agreement, shall be issued and executed promptly after an agreement is reached between Contractor and

Owner concerning the requested changes. Contractor shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as Owner and Contractor shall mutually agree.

10.3 If Owner and Contractor are unable to agree on a Change Order for the requested change, Contractor shall, nevertheless, promptly perform the change as directed by Owner in a written Work Directive Change. In that event, the Contract Amount and Contract Time shall be adjusted as directed by Owner. If Contractor disagrees with the Owner's adjustment determination, Contractor must make a claim pursuant to Section 11 of these General Conditions or else be deemed to have waived any claim on this matter it might otherwise have had.

10.4 In the event a requested change results in an increase to the Contract Amount, the amount of the increase shall be limited to the Contractor's reasonable direct labor and material costs and reasonable actual equipment costs as a result of the change (including allowance for labor burden costs) plus a maximum ten percent (10%) markup for all overhead and profit. In the event such change Work is performed by a Subcontractor, a maximum ten percent (10%) markup for all overhead and profit for all Subcontractors' and sub-subcontractors' direct labor and material costs and actual equipment costs shall be permitted, with a maximum five percent (5%) markup thereon by the Contractor for all of its overhead and profit, for a total maximum markup of fifteen percent (15%). All compensation due Contractor and any Subcontractor or sub-subcontractor for field and home office overhead is included in the markups noted above. Contractor's and Sub-Contractor's bond costs associated with any change order shall be included in the overhead and profit expenses and shall not be paid as a separate line item. No markup shall be placed on sales tax, shipping or subcontractor markup.

10.5 Owner shall have the right to conduct an audit of Contractor's books and records to verify the accuracy of the Contractor's claim with respect to Contractor's costs associated with any Change Order or Work Directive Change.

10.6 The Project Manager shall have authority to order minor changes in the Work not involving an adjustment to the Contract Amount or an extension to the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes may be effected by Field Order or by other written order. Such changes shall be binding on the Contractor.

10.7 Any modifications to this Contract shall be in compliance with the County purchasing ordinance and policies and Administrative Procedures in effect at the time such modifications are authorized.

11. CLAIMS AND DISPUTES.

11.1 Claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between Owner and Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim shall rest with the party making the Claim.

11.2 Claims by the Contractor shall be made in writing to the Project Manager within forty-eight (48) hours from when the Contractor knew or should have known of the event giving rise to such Claim or else the Contractor shall be deemed to have waived the Claim. Written supporting data shall be submitted to the Project Manager within fifteen (15) calendar days after the occurrence of the event, unless the Owner grants additional time in writing, or else the Contractor shall be deemed to have waived the Claim. All Claims shall be priced in accordance with the provisions of Subsection 10.4.

11.3 The Contractor shall proceed diligently with its performance as directed by the Owner, regardless of any pending Claim, action, suit or administrative proceeding, unless otherwise agreed to by the Owner in writing. Owner shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.

12. OTHER WORK.

12.1 Owner may perform other work related to the Project at the site by Owner's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given to Contractor prior to starting any such other work. If Contractor believes that such performance will involve additional expense to Contractor or require additional time, Contractor shall send written notice of that fact to Owner and Design Professional within forty-eight (48) hours of being notified of the other work. If the Contractor fails to send the above required forty-eight (48) hour notice, the Contractor will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Amount.

12.2 Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the Project Manager and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other Contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

12.3 If any part of Contractor's Work depends for proper execution or results upon the work of any other contractor or utility owner (or Owner), Contractor shall inspect and promptly report to Project Manager in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Contractor's failure to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work.

13. INDEMNIFICATION AND INSURANCE.

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

13.2 The duty to defend under this Article 13 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Contractor, Owner and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend under this Article 13 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the Owner or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

13.3 Contractor shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in Exhibit B to the Agreement. Further, the Contractor shall at all times comply with all of the terms, conditions, requirements and obligations set forth under Exhibit B.

14. COMPLIANCE WITH LAWS.

14.1 Contractor agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to the Project, including but not limited to those dealing with taxation, worker's compensation, equal employment and safety (including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes). If Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify Project Manager in writing. To the extent any law, rule, regulation, code, statute, or ordinance requires the inclusion of certain terms in this Agreement in order for this Agreement to be enforceable, such terms shall be deemed included in this Agreement. Notwithstanding anything in the Contract Documents to the contrary, it is understood and agreed that in the event of a change in any applicable laws, ordinances, rules or regulations subsequent to the date this

Agreement was executed that increases the Contractor's time or cost of performance of the Work, Contractor is entitled to a Change Order for such increases, except to the extent Contractor knew or should have known of such changes prior to the date of this Agreement.

14.2 By executing and entering into this agreement, the Contractor is formally acknowledging without exception or stipulation that it is fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended. Failure by the Contractor to comply with the laws referenced herein shall constitute a breach of this agreement and the County shall have the discretion to unilaterally terminate this agreement immediately.

14.3 Statutes and executive orders require employers to abide by the immigration laws of the United States and to employ only individuals who are eligible to work in the United States.

The Employment Eligibility Verification System (E-Verify) operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA), provides an Internet-based means of verifying employment eligibility of workers in the United States; it is not a substitute for any other employment eligibility verification requirements. The program will be used for Collier County formal Invitations to Bid (ITB) and Request for Proposals (RFP) including professional services and construction services.

Exceptions to the program:

- Commodity based procurement where no services are provided.
- Where the requirement for the affidavit is waived by the Board of County Commissioners

Vendors / Bidders are required to enroll in the E-Verify program, and provide acceptable evidence of their enrollment, at the time of the submission of the vendor's/bidder's proposal. Acceptable evidence consists of a copy of the properly completed E-Verify Company Profile page or a copy of the fully executed E-Verify Memorandum of Understanding for the company. Vendors are also required to provide the Collier County Purchasing Department an executed affidavit certifying they shall comply with the E-Verify Program. The affidavit is attached to the solicitation documents. **If the Bidder/Vendor does not comply with providing both the acceptable E-Verify evidence and the executed affidavit the bidder's / vendor's proposal may be deemed non-responsive.**

Additionally, vendors shall require all subcontracted vendors to use the E-Verify system for all purchases not covered under the "Exceptions to the program" clause above.

For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <http://www.dhs.gov/E-Verify>. It shall be the

vendor's responsibility to familiarize themselves with all rules and regulations governing this program.

Vendor acknowledges, and without exception or stipulation, any firm(s) receiving an award shall be fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended and with the provisions contained within this affidavit. Failure by the awarded firm(s) to comply with the laws referenced herein or the provisions of this affidavit shall constitute a breach of the award agreement and the County shall have the discretion to unilaterally terminate said agreement immediately.

15. CLEANUP AND PROTECTIONS.

15.1 Contractor agrees to keep the Project site clean at all times of debris, rubbish and waste materials arising out of the Work. At the completion of the Work, Contractor shall remove all debris, rubbish and waste materials from and about the Project site, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Project site clean and ready for occupancy by Owner.

15.2 Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Contractor from damage during the prosecution of the Work. Subject to the Section 2.3 above, any such improvements so damaged shall be restored by Contractor to the condition equal to that existing at the time of Contractor's commencement of the Work.

16. ASSIGNMENT.

16.1 Contractor shall not assign this Agreement or any part thereof, without the prior consent in writing of Owner. Any attempt to assign or otherwise transfer this Agreement, or any part herein, without the Owner's consent, shall be void. If Contractor does, with approval, assign this Agreement or any part thereof, it shall require that its assignee be bound to it and to assume toward Contractor all of the obligations and responsibilities that Contractor has assumed toward Owner.

17. PERMITS, LICENSES AND TAXES.

17.1 Pursuant to Section 218.80, F.S., Owner will pay for all Collier County permits and fees, including license fees, permit fees, impact fees or inspection fees applicable to the Work through an internal budget transfer(s). Contractor is not responsible for paying for permits issued by Collier County, but Contractor is responsible for acquiring all permits. Owner may require the Contractor to deliver internal budget transfer documents to applicable Collier County agencies when the Contractor is acquiring permits. Owner will not be obligated to pay for any permits obtained by Subcontractors.

17.2 All permits, fees and licenses necessary for the prosecution of the Work which are not issued by Collier County shall be acquired and paid for by the Contractor.

17.3 Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work.

18. TERMINATION FOR DEFAULT.

18.1 Contractor shall be considered in material default of the Agreement and such default shall be considered cause for Owner to terminate the Agreement, in whole or in part, as further set forth in this Section, if Contractor: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by the Project Manager or as provided for in the approved Progress Schedule; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) materially breaches any other provision of the Contract Documents.

18.2 Owner shall notify Contractor in writing of Contractor's default(s). If Owner determines that Contractor has not remedied and cured the default(s) within seven (7) calendar days following receipt by Contractor of said written notice or such longer period of time as may be consented to by Owner in writing and in its sole discretion, then Owner, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Contractor's right to proceed under the Agreement, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Contractor, take assignments of any of Contractor's subcontracts and purchase orders, and complete all or any portion of Contractor's Work by whatever means, method or agency which Owner, in its sole discretion, may choose.

18.3 If Owner deems any of the foregoing remedies necessary, Contractor agrees that it shall not be entitled to receive any further payments hereunder until after the Project is completed. All moneys expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including Design Professional and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, Contractor agrees to pay promptly to Owner on demand the full amount of such excess, including costs of collection, attorneys' fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by the Owner to complete the Work, such excess shall be paid to the Contractor. The amount to be paid to the Contractor or Owner, as the case may be, shall be approved by the

Project Manager, upon application, and this obligation for payment shall survive termination of the Agreement.

18.4 The liability of Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by Owner in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefore or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder.

18.5 If, after notice of termination of Contractor's right to proceed pursuant to this Section, it is determined for any reason that Contractor was not in default, or that its default was excusable, or that Owner is not entitled to the remedies against Contractor provided herein, then the termination will be deemed a termination for convenience and Contractor's remedies against Owner shall be the same as and limited to those afforded Contractor under Section 19 below.

18.6 In the event (i) Owner fails to make any undisputed payment to Contractor within thirty (30) days after such payment is due or Owner otherwise persistently fails to fulfill some material obligation owed by Owner to Contractor under this Agreement, and (ii) Owner has failed to cure such default within fourteen (14) days of receiving written notice of same from Contractor, then Contractor may stop its performance under this Agreement until such default is cured, after giving Owner a second fourteen (14) days written notice of Contractor's intention to stop performance under the Agreement. If the Work is so stopped for a period of one hundred and twenty (120) consecutive days through no act or fault of the Contractor or its Subcontractors or their agents or employees or any other persons performing portions of the Work under contract with the Contractor or any Subcontractor, the Contractor may terminate this Agreement by giving written notice to Owner of Contractor's intent to terminate this Agreement. If Owner does not cure its default within fourteen (14) days after receipt of Contractor's written notice, Contractor may, upon fourteen (14) additional days' written notice to the Owner, terminate the Agreement and recover from the Owner payment for Work performed through the termination date, but in no event shall Contractor be entitled to payment for Work not performed or any other damages from Owner.

19. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION.

19.1 Owner shall have the right to terminate this Agreement without cause upon seven (7) calendar days written notice to Contractor. In the event of such termination for convenience, Contractor's recovery against Owner shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but Contractor shall not be entitled to any other or further recovery against Owner, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

19.2 Owner shall have the right to suspend all or any portions of the Work upon giving Contractor not less than two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Contractor's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in the Contract Documents. In no event shall the Contractor be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds six (6) months, the Contractor shall have the right to terminate the Agreement with respect to that portion of the Work which is subject to the ordered suspension.

20. COMPLETION.

20.1 When the entire Work (or any portion thereof designated in writing by Owner) is ready for its intended use, Contractor shall notify Project Manager in writing that the entire Work (or such designated portion) is substantially complete. Within a reasonable time thereafter, Owner, Contractor and Design Professional shall make an inspection of the Work (or designated portion thereof) to determine the status of completion. If Owner, after conferring with the Design Professional, does not consider the Work (or designated portion) substantially complete, Project Manager shall notify Contractor in writing giving the reasons therefore. If Owner, after conferring with the Design Professional, considers the Work (or designated portion) substantially complete, Project Manager shall prepare and deliver to Contractor a Certificate of Substantial Completion which shall fix the date of Substantial Completion for the entire Work (or designated portion thereof) and include a tentative punch-list of items to be completed or corrected by Contractor before final payment. Owner shall have the right to exclude Contractor from the Work and Project site (or designated portion thereof) after the date of Substantial Completion, but Owner shall allow Contractor reasonable access to complete or correct items on the tentative punch-list.

20.2 Upon receipt of written certification by Contractor that the Work is completed in accordance with the Contract Documents and is ready for final inspection and acceptance, Project Manager and Design Professional will make such inspection and, if they find the Work acceptable and fully performed under the Contract Documents shall promptly approve a payment, recommending that, on the basis of their observations and inspections, and the Contractor's certification that the Work has been completed in accordance with the terms and conditions of the Contract Documents, that the entire balance found to be due Contractor is due and payable. Neither the final payment nor the retainage shall become due and payable until Contractor submits:

- (1) Receipt of Contractor's Final Application for Payment.
- (2) The Release and Affidavit in the form attached as Exhibit C.
- (3) Consent of surety to final payment.
- (4) Receipt of the final payment check list.
- (5) If required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner.

Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though the Design Professional may have issued its recommendations. Unless and until the Owner is completely satisfied, neither the final payment nor the retainage shall become due and payable.

21. WARRANTY.

21.1 Contractor shall obtain and assign to Owner all express warranties given to Contractor or any subcontractors by any subcontractor or materialmen supplying materials, equipment or fixtures to be incorporated into the Project. Contractor warrants to Owner that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Contractor further warrants to Owner that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. If, within one (1) year after Substantial Completion, any Work is found to be defective or not in conformance with the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner. Contractor shall also be responsible for and pay for replacement or repair of adjacent materials or Work which may be damaged as a result of such replacement or repair. Further, in the event of an emergency, Owner may commence to correct any defective Work, without prior notice to Contractor, at Contractor's expense. These warranties are in addition to those implied warranties to which Owner is entitled as a matter of law.

21.2 No later than 30 days prior to expiration of the warranty, the Project Manager, or another representative of the Owner, shall conduct an inspection of the warranted work to verify compliance with the requirements of the Agreement. The Contractor's Representative shall be present at the time of inspection and shall take remedial actions to correct any deficiencies noted in the inspection. Failure of the Contractor to correct the cited deficiencies shall be grounds for the Owner to disqualify the Contractor from future bid opportunities with the Owner, in addition to any other rights and remedies available to Owner.

22. TESTS AND INSPECTIONS.

22.1 Owner, Design Professional, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project site, for their observation, inspection and testing. Contractor shall provide proper, safe conditions for such access. Contractor shall provide Project Manager with timely notice of readiness of the Work for all required inspections, tests or approvals.

22.2 If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested or approved, Contractor shall assume full

responsibility therefore, pay all costs in connection therewith and furnish Project Manager the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to the Project Manager.

22.3 Contractor is responsible, without reimbursement from Owner, for re-inspection fees and costs; to the extent such re-inspections are due to the fault or neglect of Contractor.

22.4 If any Work that is to be inspected, tested or approved is covered without written concurrence from the Project Manager, such work must, if requested by Project Manager, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Project Manager timely notice of Contractor's intention to cover the same and Project Manager has not acted with reasonable promptness to respond to such notice. If any Work is covered contrary to written directions from Project Manager, such Work must, if requested by Project Manager, be uncovered for Project Manager's observation and be replaced at Contractor's sole expense.

22.5 The Owner shall charge to Contractor and may deduct from any payments due Contractor all engineering and inspection expenses incurred by Owner in connection with any overtime work. Such overtime work consisting of any work during the construction period beyond the regular eight (8) hour day and for any work performed on Saturday, Sunday or holidays.

22.6 Neither observations nor other actions by the Project Manager or Design Professional nor inspections, tests or approvals by others shall relieve Contractor from Contractor's obligations to perform the Work in accordance with the Contract Documents.

23. DEFECTIVE WORK.

23.1 Work not conforming to the requirements of the Contract Documents or any warranties made or assigned by Contractor to Owner shall be deemed defective Work. If required by Project Manager, Contractor shall as directed, either correct all defective Work, whether or not fabricated, installed or completed, or if the defective Work has been rejected by Project Manager, remove it from the site and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including, but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby, and shall hold Owner harmless for same.

23.2 If the Project Manager considers it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others and such Work is not otherwise required to be inspected or tested, Contractor, at Project Manager's request, shall uncover, expose or otherwise make available for observation, inspection or tests as Project Manager may require, that portion of the Work in question, furnishing all

necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

23.3 If any portion of the Work is defective, or if Contractor fails to supply sufficient skilled workers, suitable materials or equipment or fails to finish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Project Manager may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of Project Manager to stop the Work shall be exercised, if at all, solely for Owner's benefit and nothing herein shall be construed as obligating the Project Manager to exercise this right for the benefit of Design Engineer, Contractor, or any other person.

23.4 Should the Owner determine, at its sole opinion, it is in the Owner's best interest to accept defective Work, the Owner may do so. Contractor shall bear all direct, indirect and consequential costs attributable to the Owner's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Amount. If the Owner accepts such defective Work after final payment, Contractor shall promptly pay Owner an appropriate amount to adequately compensate Owner for its acceptance of the defective Work.

23.5 If Contractor fails, within a reasonable time after the written notice from Project Manager, to correct defective Work or to remove and replace rejected defective Work as required by Project Manager or Owner, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any of the provisions of the Contract Documents, Owner may, after seven (7) days written notice to Contractor, correct and remedy any such deficiency. Provided, however, Owner shall not be required to give notice to Contractor in the event of an emergency. To the extent necessary to complete corrective and remedial action, Owner may exclude Contractor from any or all of the Project site, take possession of all or any part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Design Professional and their respective representatives, agents, and employees such access to the Project site as may be necessary to enable Owner to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of Owner in exercising such rights and remedies shall be charged against Contractor, and a Change

Order shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

24. SUPERVISION AND SUPERINTENDENTS.

24.1 Contractor shall plan, organize, supervise, schedule, monitor, direct and control the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents. Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who shall be subject to Owner's approval and not be replaced without prior written notice to Project Manager except under extraordinary circumstances. The superintendent shall be employed by the Contractor and be the Contractor's representative at the Project site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor. Owner shall have the right to direct Contractor to remove and replace its Project superintendent, with or without cause. Attached to the Agreement as Exhibit N is a list identifying Contractor's Project Superintendent and all of Contractor's key personnel who are assigned to the Project; such identified personnel shall not be removed without Owner's prior written approval, and if so removed must be immediately replaced with a person acceptable to Owner.

24.2 Contractor shall have a competent superintendent on the project at all times whenever contractor's work crews, or work crews of other parties authorized by the Project Manager are engaged in any activity whatsoever associated with the Project. Should the Contractor fail to comply with the above condition, the Project Manager shall, at his discretion, deduct from the Contractor's monthly pay estimate, sufficient moneys to account for the Owner's loss of adequate project supervision, not as a penalty, but as liquidated damages, separate from the liquidated damages described in Section 5.B, for services not rendered.

25. PROTECTION OF WORK.

25.1 Contractor shall fully protect the Work from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. If Contractor or any one for whom Contractor is legally liable for is responsible for any loss or damage to the Work, or other work or materials of Owner or Owner's separate contractors, Contractor shall be charged with the same, and any moneys necessary to replace such loss or damage shall be deducted from any amounts due Contractor.

25.2 Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

25.3 Contractor shall not disturb any benchmark established by the Owner or Design Professional with respect to the Project. If Contractor, or its subcontractors, agents or anyone for whom Contractor is legally liable, disturbs the Owner or Design Professional's benchmarks, Contractor shall immediately notify Project Manager and Design Professional. The Owner or Design Professional shall re-establish the benchmarks and Contractor shall be liable for all costs incurred by Owner associated therewith.

26. EMERGENCIES.

26.1 In the event of an emergency affecting the safety or protection of persons or the Work or property at the Project site or adjacent thereto, Contractor, without special instruction or authorization from Owner or Design Professional is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Project Manager written notice within forty-eight (48) hours after Contractor knew or should have known of the occurrence of the emergency, if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Project Manager determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Contractor fails to provide the forty-eight (48) hour written notice noted above, the Contractor shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time.

27. USE OF PREMISES.

27.1 Contractor shall maintain all construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other lands and areas permitted by law, rights of way, permits and easements, and shall not unreasonably encumber the Project site with construction equipment or other material or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or any land or areas contiguous thereto, resulting from the performance of the Work.

28. SAFETY.

28.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

28.1.1 All employees on or about the project site and other persons and/or organizations who may be affected thereby;

28.1.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site; and

28.1.3 Other property on Project site or adjacent thereto, including trees, shrubs, walks, pavements, roadways, structures, utilities and any underground structures or improvements not designated for removal, relocation or replacement in the Contract Documents.

28.2 Contractor shall comply with all applicable codes, laws, ordinances, rules and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of underground structures and improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by Owner has occurred.

All new electrical installations shall incorporate NFPA 70E Short Circuit Protective Device Coordination and Arc Flash Studies where relevant as determined by the engineer.

All electrical installations shall be labeled with appropriate NFPA 70E arc flash boundary and PPE Protective labels.

28.3. Contractor shall designate a responsible representative located on a full time basis at the Project site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.

28.4 Alcohol, drugs and all illegal substances are strictly prohibited on any Owner property. All employees of Contractor, as well as those of all subcontractors and those of any other person or entity for whom Contractor is legally liable (collectively referred to herein as "Employees"), shall not possess or be under the influence of any such substances while on any Owner property. Further, Employees shall not bring on to any Owner property any gun, rifle or other firearm, or explosives of any kind.

28.5 Contractor acknowledges that the Work may be progressing on a Project site which is located upon or adjacent to an existing Owner facility. In such event, Contractor shall comply with the following:

28.5.1 All Owner facilities are smoke free. Smoking is strictly prohibited;

28.5.2 All Employees shall be provided an identification badge by Contractor. Such identification badge must be prominently displayed on the outside of the Employees' clothing at all times. All Employees working at the Project site must log in and out with the Contractor each day;

28.5.3 Contractor shall strictly limit its operations to the designated work areas and shall not permit any Employees to enter any other portions of Owner's property without Owner's expressed prior written consent;

28.5.4 All Employees are prohibited from distributing any papers or other materials upon Owner's property, and are strictly prohibited from using any of Owner's telephones or other office equipment;

28.5.5 All Employees shall at all times comply with the OSHA regulations with respect to dress and conduct at the Project site. Further, all Employees shall comply with the dress, conduct and facility regulations issued by Owner's officials onsite, as said regulations may be changed from time to time;

28.5.6 All Employees shall enter and leave Owner's facilities only through the ingress and egress points identified in the site utilization plan approved by Owner or as otherwise designated, from time to time, by Owner in writing;

28.5.7 When requested, Contractor shall cooperate with any ongoing Owner investigation involving personal injury, economic loss or damage to Owner's facilities or personal property therein;

28.5.8 The Employees may not solicit, distribute or sell products while on Owner's property. Friends, family members or other visitors of the Employees are not permitted on Owner's property; and

28.5.9 At all times, Contractor shall adhere to Owner's safety and security regulations, and shall comply with all security requirements at Owner's facilities, as said regulations and requirements may be modified or changed by Owner from time to time.

29. PROJECT MEETINGS.

Prior to the commencement of Work, the Contractor shall attend a pre-construction conference with the Project Manager, Design Professional and others as appropriate to discuss the Progress Schedule, procedures for handling shop drawings and other submittals, and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work. During the prosecution of the Work, the Contractor shall attend any and all meetings convened by the Project Manager with respect to the Project, when directed to do so by Project Manager or Design Professional. The Contractor shall have its subcontractors and suppliers attend all such meetings (including the pre-construction conference) as may be directed by the Project Manager.

30. VENDOR PERFORMANCE EVALUATION

Owner has implemented a Vendor Performance Evaluation System for all contracts awarded in excess of \$25,000. To this end, vendors will be evaluated on their performance upon completion/termination of this Agreement.

31. MAINTENANCE OF TRAFFIC POLICY

For all projects that are conducted within a Collier County Right-of-Way, the Contractor shall provide and erect Traffic Control Devices as prescribed in the current edition of the Manual On Uniform Traffic Control Devices (MUTCD), where applicable on local roadways and as prescribed in the Florida Department of Transportations Design Standards (DS), where applicable on state roadways. These projects shall also comply with Collier County's Maintenance of Traffic Policy, #5807, incorporated herein by reference. Copies are available through Risk Management and/or Purchasing Departments, and is available on-line at colliergov.net/purchasing.

The Contractor will be responsible for obtaining copies of all required manuals, MUTCD, FDOT Roadway & Traffic Design Standards Indexes, or other related documents, so to become familiar with their requirements. Strict adherence to the requirements of the Maintenance of Traffic ("MOT") policy will be enforced under this Contract.

All costs associated with the Maintenance of Traffic shall be included on the line item on the bid page.

If MOT is required, MOT is to be provided within ten (10) days of receipt of Notice of Award.

32. SALES TAX SAVINGS AND DIRECT PURCHASE

32.1 Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work. No markup shall be applied to sales tax. Additionally, as directed by Owner and at no additional cost to Owner, Contractor shall comply with and fully implement the sales tax savings program with respect to the Work, as set forth in section 32.2 below:

32.2 Notwithstanding anything herein to the contrary, because Owner is exempt from sales tax and may wish to generate sales tax savings for the Project, Owner reserves the right to make direct purchases of various construction materials and equipment included in the Work ("Direct Purchase"). Contractor shall prepare purchase orders to vendors selected by Contractor, for execution by Owner, on forms provided by Owner. Contractor shall allow two weeks for execution of all such purchase orders by Owner. Contractor represents and warrants that it will use its best efforts to cooperate with Owner in implementing this sales tax savings program in order to maximize cost savings for the Project. Adjustments to the Contract Amount will be made by appropriate Change Orders for the amounts of each Owner Direct Purchase, plus the saved sales taxes. A Change Order shall be processed promptly after each Direct Purchase, or group of similar or related Direct Purchases, unless otherwise mutually agreed upon between Owner and Contractor. With respect to all Direct Purchases by Owner, Contractor shall remain responsible for coordinating, ordering, inspecting,

accepting delivery, storing, handling, installing, warranting and quality control for all Direct Purchases. Notwithstanding anything herein to the contrary, Contractor expressly acknowledges and agrees that all Direct Purchases shall be included within and covered by Contractor's warranty to Owner to the same extent as all other warranties provided by Contractor pursuant to the terms of the Contract Documents. In the event Owner makes a demand against Contractor with respect to any Direct Purchase and Contractor wishes to make claim against the manufacturer or supplier of such Direct Purchase, upon request from Contractor Owner shall assign to Contractor any and all warranties and Contract rights Owner may have from any manufacturer or supplier of any such Direct Purchase by Owner.

32.3 Bidder represents and warrants that it is aware of its statutory responsibilities for sale tax under Chapter 212, Florida Statutes, and for its responsibilities for Federal excise taxes.

33. SUBCONTRACTS

33.1 Contractor shall review the design and shall determine how it desires to divide the sequence of construction activities. Contractor will determine the breakdown and composition of bid packages for award of subcontracts, based on the current Project Milestone Schedule, and shall supply a copy of that breakdown and composition to Owner and Design Professional for their review and approval prior to submitting its first Application for Payment. Contractor shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and costs.

33.2 A Subcontractor is any person or entity who is performing, furnishing, supplying or providing any portion of the Work pursuant to a contract with Contractor. Contractor shall be solely responsible for and have control over the Subcontractors. Contractor shall negotiate all Change Orders, Work Directive Changes, Field Orders and Requests for Proposal, with all affected Subcontractors and shall review the costs of those proposals and advise Owner and Design Professional of their validity and reasonableness, acting in Owner's best interest, prior to requesting approval of any Change Order from Owner. All Subcontractors performing any portion of the Work on this Project must be "qualified" as defined in Collier County Ordinance 2013-69, meaning a person or entity that has the capability in all respects to perform fully the Agreement requirements with respect to its portion of the Work and has the integrity and reliability to assure good faith performance.

33.3 In addition to those Subcontractors identified in Contractor's bid that were approved by Owner, Contractor also shall identify any other Subcontractors, including their addresses, licensing information and phone numbers, it intends to utilize for the Project prior to entering into any subcontract or purchase order and prior to the Subcontractor commencing any work on the Project. The list identifying each Subcontractor cannot be modified, changed, or amended without prior written approval

from Owner. Any and all Subcontractor work to be self-performed by Contractor must be approved in writing by Owner in its sole discretion prior to commencement of such work. Contractor shall continuously update that Subcontractor list, so that it remains current and accurate throughout the entire performance of the Work.

33.4 Contractor shall not enter into a subcontract or purchase order with any Subcontractor, if Owner reasonably objects to that Subcontractor. Contractor shall not be required to contract with anyone it reasonably objects to. Contractor shall keep on file a copy of the license for every Subcontractor and sub-subcontractor performing any portion of the Work, as well as maintain a log of all such licenses. All subcontracts and purchase orders between Contractor and its Subcontractors shall be in writing and are subject to Owner's approval. Further, unless expressly waived in writing by Owner, all subcontracts and purchase orders shall (1) require each Subcontractor to be bound to Contractor to the same extent Contractor is bound to Owner by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the Subcontractor, (2) provide for the assignment of the subcontract or purchase order from Contractor to Owner at the election of Owner upon termination of Contractor, (3) provide that Owner will be an additional indemnified party of the subcontract or purchase order, (4) provide that Owner, Collier County Government, will be an additional insured on all liability insurance policies required to be provided by the Subcontractor except workman's compensation and business automobile policies, (5) assign all warranties directly to Owner, and (6) identify Owner as an intended third-party beneficiary of the subcontract or purchase order. Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound. Each Subcontractor shall similarly make copies of such documents available to its sub-subcontractors.

33.5 Each Subcontractor performing work at the Project Site must agree to provide field (on-site) supervision through a named superintendent for each trade (e.g., general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in its subcontract or purchase order. In addition, the Subcontractor shall assign and name a qualified employee for scheduling direction for its portion of the Work. The supervisory employees of the Subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The Subcontractor shall include a resume of experience for each employee identified by it to supervise and schedule its work.

33.6 Unless otherwise expressly waived by Owner in writing, all subcontracts and purchase orders shall provide:

33.6.1 That the Subcontractor's exclusive remedy for delays in the performance of the subcontract or purchase order caused by events beyond its control, including delays claimed to be caused by Owner or Design Professional or attributable to Owner or Design Professional and including claims based on breach of contract or negligence, shall be an extension of its contract time.

33.6.2 In the event of a change in the work, the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 10% for overhead and profit.

33.6.3 The subcontract or purchase order, as applicable, shall require the Subcontractor to expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation. Further, Contractor shall require all Subcontractors to similarly incorporate the terms of this Section 33.6 into their sub-subcontracts and purchase orders.

33.6.4 Each subcontract and purchase order shall require that any claims by Subcontractor for delay or additional cost must be submitted to Contractor within the time and in the manner in which Contractor must submit such claims to Owner, and that failure to comply with such conditions for giving notice and submitting claims shall result in the waiver of such claims.

34. CONSTRUCTION SERVICES

34.1 Contractor shall maintain at the Project site, originals or copies of, on a current basis, all Project files and records, including, but not limited to, the following administrative records:

- 34.1.1 Subcontracts and Purchase Orders
- 34.1.2 Subcontractor Licenses
- 34.1.3 Shop Drawing Submittal/Approval Logs
- 34.1.4 Equipment Purchase/Delivery Logs
- 34.1.5 Contract Drawings and Specifications with Addenda
- 34.1.6 Warranties and Guarantees
- 34.1.7 Cost Accounting Records
- 34.1.8 Labor Costs
- 34.1.9 Material Costs
- 34.1.10 Equipment Costs
- 34.1.11 Cost Proposal Request
- 34.1.12 Payment Request Records
- 34.1.13 Meeting Minutes
- 34.1.14 Cost-Estimates
- 34.1.15 Bulletin Quotations
- 34.1.16 Lab Test Reports
- 34.1.17 Insurance Certificates and Bonds
- 34.1.18 Contract Changes
- 34.1.19 Permits
- 34.1.20 Material Purchase Delivery Logs
- 34.1.21 Technical Standards
- 34.1.22 Design Handbooks
- 34.1.23 "As-Built" Marked Prints
- 34.1.24 Operating & Maintenance Instruction

- 34.1.25 Daily Progress Reports
- 34.1.26 Monthly Progress Reports
- 34.1.27 Correspondence Files
- 34.1.28 Transmittal Records
- 34.1.29 Inspection Reports
- 34.1.30 Punch Lists
- 34.1.31 PMIS Schedule and Updates
- 34.1.32 Suspense (Tickler) Files of Outstanding Requirements

The Project files and records shall be available at all times to Owner and Design Professional or their designees for reference, review or copying.

34.2 Contractor Presentations

At the discretion of the County, the Contractor may be required to provide a brief update on the Project to the Collier County Board of County Commissioners, "Board", up to two (2) times per contract term. Presentations shall be made in a properly advertised Public Meeting on a schedule to be determined by the County Manager or his designee. Prior to the scheduled presentation date, the Contractor shall meet with appropriate County staff to discuss the presentation requirements and format. Presentations may include, but not be limited to, the following information: Original contract amount, project schedule, project completion date and any changes to the aforementioned since Notice to Proceed was issued.

35. SECURITY

If required, Vendor / Contractor / Proposer shall be responsible for the costs of providing background checks by the Collier County Facilities Management Department for all employees that shall provide services to the County under this Agreement. This may include, but not be limited to, checking federal, state and local law enforcement records, including a state and FBI fingerprint check, credit reports, education, residence and employment verifications and other related records. Contractor shall be required to maintain records on each employee and make them available to the County for at least four (4) years.

36. VENUE

Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Collier County, Florida, which courts have sole and exclusive jurisdiction on all such matters.

37. VALUE ENGINEERING

All projects with an estimated cost of \$10 million or more shall be reviewed for consideration of a Value Engineering (VE) study conducted during project development. A "project" shall be defined as the collective contracts, which may include but not be

limited to: design, construction, and construction, engineering and inspection (CEI) services. Additionally, any project with an estimated construction value of \$2 million or more may be reviewed for VE at the discretion of the County.

38. ABOVEGROUND/UNDERGROUND TANKS

38.1 The contractor shall ensure compliance with all NFPA regulations: specifically 110 & 30/30A; FDEP chapter 62 regulations: specifically 761, 762, 777, and 780; 376 & 403 Florida Statutes; and STI, UL, PEI, ASME, NACE, NLPA, NIST & API referenced standards pertaining to the storage of hazardous materials and petroleum products.

38.2 The contractor shall notify the Solid & Hazardous Waste Management Department (SHWMD) prior to the installation, removal, or maintenance of any storage tank, including day tanks for generators, storing / will be storing petroleum products or hazardous materials. The contractor shall provide a 10 day and 48 hour notice to SHWMD 239-252-2508 prior to commencement.

The contractor shall provide the plans pertaining to the storage tank systems containing hazardous materials / petroleum products to the SHWMD prior to plans submittal to a permitting entity and then SHWMD must approve the plans prior to contractor's submittal for permitting.

39. STANDARDS OF CONDUCT: PROJECT MANAGER, SUPERVISOR, EMPLOYEES.

The Contractor shall employ people to work on Owner's projects who are neat, clean, well-groomed and courteous. Subject to the Americans with Disabilities Act, Contractor shall supply competent employees who are physically capable of performing their employment duties. The Owner may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on Owner's projects is not in the best interest of the County.

40. DISPUTE RESOLUTION

Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. The negotiation shall be attended by representatives of CONSULTANT with full decision-making authority and by OWNER'S staff person who would make the presentation of any settlement reached during negotiations to OWNER for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. The mediation shall be attended by representatives of CONSULTANT with full decision-making authority and by OWNER'S staff person who

would make the presentation of any settlement reached at mediation to OWNER'S board for approval. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under Section 44.102, Fla. Stat.

Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Collier County, Florida, which courts have sole and exclusive jurisdiction on all such matters.

EXHIBIT I: SUPPLEMENTAL TERMS AND CONDITIONS
FEMA 97.036 Provisions

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In cases of disagreement with any other section of this contract, the Supplemental Conditions shall govern.

Flow Down of Terms and Conditions from the Grant Agreement

Subcontracts: If the vendor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be forwarded to the Department for review and approval. The vendor agrees to include in the subcontract that (1) the subcontractors is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Department and Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The recipient shall document in the quarterly report the subcontractor's progress in performing its work under this agreement. For each subcontract, the Recipient shall provide a written statement to the Department as to whether the subcontractor is a minority vendor as defined in Section 288.703, Fla. Stat.

Administrative, Contractual, or Legal Remedies

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

Termination for Cause and for Convenience

This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

- a) Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate; and
- b) An opportunity for consultation with the terminating party prior to termination.

This contract may be terminated in whole or in part in writing by the local government for its convenience, provided that the other party is afforded the same notice and consultation opportunity specified in I (a) above. If termination for default is effected by the local government, an equitable adjustment in the price for this contract shall be made, but no amount shall be allowed for anticipated profit on unperformed services or other work, and any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the local government because of the contractor's default.

If termination for convenience is effected by the local government, the equitable adjustment shall include a reasonable profit for services or other work performed for which profit has not already been included in an invoice. For any termination, the equitable adjustment shall provide for payment to the contractor for

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EXHIBIT I: SUPPLEMENTAL TERMS AND CONDITIONS
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services rendered and expenses incurred prior to receipt of the notice of intent to terminate, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments (e.g., suppliers, subcontractors) which had become firm prior to receipt of the notice of intent to terminate.

Upon receipt of a termination action under paragraphs (a) or (b) above, the contractor shall

- promptly discontinue all affected work (unless the notice directs otherwise) and
- deliver or otherwise make available to the local government all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the contractor in performing this contract, whether completed or in process.

Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations

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

- The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, 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, creed, color, 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 by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 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, creed, color, or national origin.
- 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 by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive
- Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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- The contractor will include the provisions of Paragraphs (1) through (7) 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 No. 11246 of Sept. 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 contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq.

The Contractor agrees it will require that mechanics and laborers (including watchmen and guards) employed on this federally assisted contract be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week.

Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq.

The Contractor agrees it will require that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.

Copeland "Anti-Kickback" Act (U.S.C. Section 51)

The Contractor agrees to comply with the Anti-Kickback Act of 1968 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities.

Reporting

The contractor will provide any information required to comply with the grantor agency requirements and regulations pertaining to reporting.

Patents and Data

No reports, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the contractor. The grantor agency and the grantee shall possess all rights to invention or discovery, as well as rights in data which may arise as a result of the contractor's services.

EXHIBIT I: SUPPLEMENTAL TERMS AND CONDITIONS
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Access to Records

The local government, the Florida Department of Emergency Management, the Federal grantor agency, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

Retention of Records

The contractor shall retain all records relating to this contract for **five (5)** years after the local government makes final payment and all other pending matters are closed.

Clean Air Act, Federal Water Pollution Control Act, Executive Order 11738, and US EPA Regulations

Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the Contractor or recipient to 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 (33 U.S. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR Part 15 and 61). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Energy Efficiency Standards

The contractor shall comply with any mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Debarment and Suspension (Executive Orders 12549 and 12689)

Contract awards that exceed the small purchase threshold and certain other contract awards shall not be made to parties listed on the nonprocurement portion of the General Services Administration's List of parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principals. Vendors submitting proposals for this purchase must attest that they, and their subcontractors and partners, are not excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits, pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404, and each agency's codification of the Common Rule for Nonprocurement suspension and debarment. Contractor's debarment and suspension status will be validated at the System for Award Management at www.sam.gov and the State of Florida at http://dms.myflorida.com/business/operations/state/purchasing/vendor_information.

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EXHIBIT I: SUPPLEMENTAL TERMS AND CONDITIONS

FEMA 97.036 Provisions

If appropriate to the project, the Contractor will provide assurances regarding the following:

- It will establish safeguards to prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C.: 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualified handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973.
- It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes.
- It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination.
- It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR Part 40 for residential structures. The Subgrantee will be responsible for conducting inspections to ensure compliance with these specifications by the contractor.
- It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C.: 1681-1683 and 1685 - 1686), which prohibits discrimination on the basis of sex.
- It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism.
- It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3) as amended, that relate to confidentiality of alcohol and drug abuse patient records.
- It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C.: 4821 et seq.) which prohibits the use of lead based paint in construction of rehabilitation or residential structures.
- It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the state Energy Conservation Plan adopted pursuant thereto.
- It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347.
- It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.
- It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974 (42 U.S.C. 300f-300j) regarding the protection of underground water sources.
- It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642.
- It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626.
- It will comply with the Endangered Species Act of 1973, 16 U.S.C. 1531-1544.
- It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-763.
- It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system.
- It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice).
- It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510.
- It will assure project consistency with the approved state program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464.
- It will comply with the Fish and Wildlife Coordination Act of 1958; 16 U.S.C. 661-666.

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**EXHIBIT I: SUPPLEMENTAL TERMS AND CONDITIONS
FEMA 97.036 Certifications and Forms**

**THE FOLLOWING DOCUMENTS NEED TO BE RETURNED WITH SOLICITATION DOCUMENTS BY
DEADLINE TO BE CONSIDERED RESPONSIVE**

1. Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions
2. General Grant Clauses
3. Disclosure of Lobbying Activities
4. Conflict of Interest Affidavit
5. Anticipated DBE or M/WBE Participation Statement
6. Construction Contractors Bid Opportunity List

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COLLIER COUNTY



- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

<u>Earth TECH Enterprises</u>	<u>NAPLES BEACH RENOVATION</u>
Name <u>LISA Gehring</u>	Project Name
<u>VICE PRESIDENT</u>	<u>14-6352</u>
Title	Project Number
<u>Earth TECH Enterprises</u>	<u>59-3679652</u>
Firm	Tax ID Number
<u>5425 Golden Gate Pkwy</u>	<u>N/A</u>
Street Address <u>STE 3</u>	DUNS Number
<u>NAPLES, FL 34116</u>	
City, State, Zip	
<u>[Signature]</u>	<u>10-14-14</u>
Signature	Date



Collier County

Acknowledgement of Terms, Conditions, and Grant Clauses

Flow Down of Terms and Conditions from the Grant Agreement

Subcontracts: If the vendor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the Department for review and approval. The vendor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Department and Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The recipient shall document in the quarterly report the subcontractor's progress in performing its work under this agreement. For each subcontract, the Recipient shall provide a written statement to the Department as to whether the subcontractor is a minority vendor as defined in Section 288.703, Fla. Stat.

Grant Clauses

On behalf of my firm, I acknowledge, and agree to perform all of the specifications and grant requirements identified in this solicitation document(s).

Vendor/Contractor Name EarthTECH Enterprises Date 10-14-14
Authorized Signature *Lisa Gehring* Lisa Gehring
Address 5425 Golden Gate Pkwy # 3
Naples, FL 34116
Solicitation Naples Beach Renovation Contract # 14-6352



COLLIER COUNTY

CERTIFICATION REGARDING LOBBYING

The undersigned Lisa Gehring (Vendor/ Contractor) certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Vendor/Contractor, Lisa Gehring - Earth Tech Enterprises, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

[Signature] Signature of Vendor/Contractor's Authorized Official
Lisa Gehring, VP Earth Tech Enterprises Name and Title of Vendor/Contractor's Authorized Official
10-14-14 Date



CONFLICT OF INTEREST CERTIFICATION

14-6352
Collier County Solicitation No.

I, Lisa Gehring, hereby certify that to the best of my knowledge, neither I nor my spouse, dependent child, general partner, or any organization for which I am serving as an officer, director, trustee, general partner or employee, or any person or organization with whom I am negotiating or have an arrangement concerning prospective employment has a financial interest in this matter.

I further certify to the best of my knowledge that this matter will not affect the financial interests of any member of my household. Also, to the best of my knowledge, no member of my household; no relative with whom I have a close relationship; no one with whom my spouse, parent or dependent child has or seeks employment; and no organization with which I am seeking a business relationship nor which I now serve actively or have served within the last year are parties or represent a party to the matter.

I also acknowledge my responsibility to disclose the acquisition of any financial or personal interest as described above that would be affected by the matter, and to disclose any interest I, or anyone noted above, has in any person or organization that does become involved in, or is affected at a later date by, the conduct of this matter.

<u>Lisa Gehring</u> Name	<u>[Signature]</u> Signature
<u>Vice President</u> Position	<u>10-14-14</u> Date

Privacy Act Statement

Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.), Executive Order 12674 and 5 CFR Part 2634, Subpart I require the reporting of this information. The primary use of the information on this form is for review by officials of The Justice Department to determine compliance with applicable federal conflict of interest laws and regulations. Additional disclosures of the information on this report may be made: (1) to a federal, state or local law enforcement agency if the Justice Department becomes aware of a violation or potential violation of law or regulations; (2) to a court or party in a court or federal administrative proceeding if the government is a party or in order to comply with a judge-issued subpoena; (3) to a source when necessary to obtain information relevant to a conflict of interest investigation or decision; (4) to the National Archives and Records Administration or the General Services Administration in records management inspections; (5) to the Office of Management and Budget during legislative coordination on private relief legislation; and (6) in response to a request for discovery or for the appearance of a witness in a judicial or administrative proceeding, if the information is relevant to the subject matter. This confidential certification will not be disclosed to any requesting person unless authorized by law. See also the OGE/GOVT-2 executive branch-wide Privacy Act system of records.

**COLLIER COUNTY
 ANTICIPATED DBE OR M/WBE PARTICIPATION STATEMENT**

DBE/MBE/WBE Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.

A. PRIME VENDOR/CONTRACTOR INFORMATION

PRIME NAME	PRIME FEID NUMBER	CONTRACT DOLLAR AMOUNT
<i>Earth Tech Enterprises Inc</i>	<i>59-3679652</i>	<i>\$ 748,861.20</i>
IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS 8A CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? <i>No</i>	DBE? Y <input checked="" type="radio"/> MBE? Y <input checked="" type="radio"/> WBE? Y <input checked="" type="radio"/> SDB 8A? Y <input checked="" type="radio"/>	IS THE ACTIVITY OF THIS CONTRACT... CONSTRUCTION? <input checked="" type="radio"/> Y <input type="radio"/> N CONSULTATION? <input type="radio"/> Y <input checked="" type="radio"/> N OTHER? <input type="radio"/> Y <input checked="" type="radio"/> N
IS THIS SUBMISSION A REVISION?	Y <input checked="" type="radio"/>	IF YES, REVISION NUMBER _____

B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS DBE/MBE, PRIME IS TO COMPLETE THIS NEXT SECTION

DBE	M/WBE	SUBCONTRACTOR OR SUPPLIER NAME	TYPE OF WORK OR SPECIALTY	ETHNICITY CODE (See Below)	SUB/SUPPLIER DOLLAR AMOUNT	PERCENT OF CONTRACT DOLLARS
DBE	M/WBE					
DBE	M/WBE					
DBE	M/WBE					
DBE	M/WBE					
DBE	M/WBE					
DBE	M/WBE					
DBE	M/WBE					
TOTALS:						

C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR

NAME OF SUBMITTER	DATE	TITLE OF SUBMITTER
<i>Lisa Gehring</i>	<i>10-14-14</i>	<i>Vice President</i>
EMAIL ADDRESS OF PRIME (SUBMITTER)	TELEPHONE NUMBER	FAX NUMBER
<i>lisa@earthtechenterprises.com</i>	<i>239-774-1223</i>	<i>239-774-1227</i>

NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.

ETHNICITY	CODE
Black American	BA
Hispanic American	HA
Native American	NA
Subcont. Asian American	SAA
Asian-Pacific American	APA
Non-Minority Women	NMW
Other: not of any other group listed	O

D. SECTION TO BE COMPLETED BY COLLIER COUNTY

DEPARTMENT NAME	COLLIER CONTRACT # (IFB/RFP or PO/REQ)	FUNDING SOURCE

ACCEPTED BY:	DATE



CONSTRUCTION CONTRACTORS
BID OPPORTUNITY LIST

1. Federal Tax ID Number: 59-3079652 6. DBE
2. Firm Name: Earth Tech Enterprises Non-DBE
3. Phone: 239 774 1223
4. Address: 5425 Golden Gate Pkwy
STE 3
NAPLES FL 34116 7. Subcontractor
 Subconsultant
8. Annual Gross Receipts
 Less than \$1 million
 Between \$1 - \$5 million
 Between \$5 - \$10 million
 Between \$10 - \$15 million
 More than \$15 million
5. Year Firm Established: 2000
-

1. Federal Tax ID Number: _____ 6. DBE
2. Firm Name: _____ Non-DBE
3. Phone: _____
4. Address: _____

7. Subcontractor
 Subconsultant
8. Annual Gross Receipts
 Less than \$1 million
 Between \$1 - \$5 million
 Between \$5 - \$10 million
 Between \$10 - \$15 million
 More than \$15 million
5. Year Firm Established: _____
-

1. Federal Tax ID Number: _____ 6. DBE
2. Firm Name: _____ Non-DBE
3. Phone: _____
4. Address: _____

7. Subcontractor
 Subconsultant
8. Annual Gross Receipts
 Less than \$1 million
 Between \$1 - \$5 million
 Between \$5 - \$10 million
 Between \$10 - \$15 million
 More than \$15 million
5. Year Firm Established: _____
-

1. Federal Tax ID Number: _____ 6. DBE
2. Firm Name: _____ Non-DBE
3. Phone: _____
4. Address: _____

7. Subcontractor
 Subconsultant
8. Annual Gross Receipts
 Less than \$1 million
 Between \$1 - \$5 million
 Between \$5 - \$10 million
 Between \$10 - \$15 million
 More than \$15 million
5. Year Firm Established: _____
-

1. Federal Tax ID Number: _____ 6. DBE
2. Firm Name: _____ Non-DBE
3. Phone: _____
4. Address: _____

7. Subcontractor
 Subconsultant
8. Annual Gross Receipts
 Less than \$1 million
 Between \$1 - \$5 million
 Between \$5 - \$10 million
 Between \$10 - \$15 million
 More than \$15 million
5. Year Firm Established: _____
-



EXHIBIT J: TECHNICAL SPECIFICATIONS

Refer to information posted at: <http://bid.colliergov.net/bid/>

and titled: Exhibit J – Technical Specs 14-6352

EXHIBIT K: PERMITS

All permits are included in Appendices V-A and V-B of Exhibit I.

EXHIBIT L: STANDARD DETAILS

**Refer to information posted at: <http://bid.colliergov.net/bid/>
and titled: **Exhibit L – Standard Details (Sand Source) 14-6352****

EXHIBIT M: PLANS AND SPECIFICATIONS

**Refer to information posted at: <http://bid.colliergov.net/bid/>
and titled: **Exhibit M – Plans 14-6352****

EXHIBIT N: CONTRACTOR'S KEY PERSONNEL ASSIGNED TO THE PROJECT

<u>Name</u>	<u>Personnel Category</u>
Christopher Gehring	Construction Superintendent
Ben Smith	Project Manager

EXHIBIT O: PROJECT TIMELINE

Construction Schedule

Construction will be in a continuous north to south direction. No timeout for weather delays or storm events except force majeure events. CONTRACTOR begins nourishment activities on beach by November 10, 2014. The hours of operation are from 7 a.m. to 7 p.m., with no work being allowed on Sundays. No beach activities will be permitted the Thursday, Friday, Saturday, and Sunday of Thanksgiving or the week of Christmas. CONTRACTOR manages the placement events on the beach. Substantial completion of all work covered by this Bid within **thirty-four (34)** consecutive calendar days and fully completed to the point of final acceptance by the Owner within **seven (7)** consecutive calendar days after Substantial Completion. If final completion of work occurs after forty-one (41) calendar days, the contractor is assessed Liquidated Damages (LD's) of \$2,000 per day until final completion occurs. The county reserves the right to cancel the contract if final completion does not occur by 12/31/2014.



Email: adamnorthrup@colliergov.net
Telephone: (239) 252-6098
FAX: (239) 252-6302

ADDENDUM #1

Memorandum

Date: October 3, 2014
From: Adam Northrup
Procurement Strategist
To: Interested Bidders
Subject: Addendum # 1
14-6352 – Naples Beach Renourishment (Sand Placement)

The following file is issued as an addendum identifying change(s) for the referenced solicitation:

The above referenced solicitation file has been replaced with the file named **14-6352 – NBR (Sand Placement) Solicitation Addendum 1.**


All changes fix inconsistencies in the substantial and final completion days, to reflect thirty-four (34) days to substantial completion and seven (7) days to final completion for a total of forty (41) days.

Changes in the document are highlighted in **yellow**.

If you require additional information please post a question on the Online Bidding site or contact me using the above contact information.

c: Gary McAlpin

Please sign below and return a copy of this Addendum with your submittal for the above referenced solicitation.

 Christopher Geheing 10-17-14
(Signature) _____ Date
Earth Tech Enterprises Inc.
(Name of Firm) _____