**AGREEMENT BETWEEN**

**LAKE COUNTY, FLORIDA AND**

**SVENSON CONSTRUCTION, INC.**

**FOR RS MEANS ON-CALL CONTRACTOR**

**ITB #15-0440**

This is an Agreement between Lake County, Florida, a political subdivision of the State of Florida, herein referred to as COUNTY, by and through its Board of County Commissioners, and Svenson Construction, Inc., a Florida corporation, its successors and assigns, herein referred to as CONTRACTOR.

**WITNESSETH:**

**WHEREAS,** the COUNTY publicly submitted an Invitation to Bid (ITB) #15-0440 seeking firms or individuals qualified to perform construction and/or repair work for the COUNTY on projects that will not exceed $50,000; and

**WHEREAS,** CONTRACTOR desires to perform such services subject to the terms of this Agreement.

**NOW, THEREFORE, IN CONSIDERATION** of the mutual terms, understandings, conditions, promises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

## Article 1. Recitals

**1.1** The foregoing recitals are true and correct and incorporated herein.

## Article 2. Purpose

**2.1** The purpose of this Agreement is for CONTRACTOR to perform at the request of the COUNTY construction and/or repair work on projects that will not exceed $50,000.

## Article 3. Scope of Professional Services

**3.1** On the terms and conditions set forth in this Agreement, COUNTY hereby engages CONTRACTOR to provide all labor, materials and equipment to complete any assigned projects in accordance with the Scope of Services, attached hereto and incorporated herein as **Exhibit A.** Purchase Orders (PO) shall be issued to the CONTRACTOR; provided, however, that the issuance of a PO is not a directive to begin work on any particular project unless otherwise specified. A written Notice to Proceed is required for the CONTRACTOR to schedule or begin work. An emailed Notice to Proceed is deemed an acceptable method of communication under this Agreement.

It is also understood that the Scope of Services may be modified by change order as actual construction of any individual project progresses, but to be effective and binding, change orders must be in writing, executed by the parties, and in accordance with the COUNTY'S Purchasing Policies and Procedures. A copy of these policies and procedures shall be made available to the CONTRACTOR upon request.

**3.2** CONTRACTOR acknowledges that time is of the essence in carrying out CONTRACTOR's responsibilities under this Agreement. CONTRACTOR shall complete each individual project as specified in the Cost Estimate. All work shall be performed in accordance with good commercial practice. The work schedule and completion dates shall be adhered to by the CONTRACTOR except in such cases where the completion date will be delayed due to acts of God, strikes, or other causes beyond the control of the CONTRACTOR. In these cases, the CONTRACTOR shall notify the COUNTY of the delays in advance of the original completion so that a revised delivery schedule can be appropriately considered by the COUNTY. No additional days shall be granted for average weather delays. Average number of days of rainfall will be determined by http://www.sercc.com/climateinfo/historical/historical_fl.html. Days for calculating actual rainfall are days recorded with rainfall on http://www.wunderground.com.

**3.3** This Agreement shall commence on the date the last party hereto executes it, and shall remain in effect for one (1) year. The pricing contained herein shall prevails for the full duration of the initial term unless otherwise indicated. Prior to, or upon completion, of the initial term, the COUNTY shall have the option to renew this Agreement for four (4) additional one (1) year terms.

**3.4** The CONTRACTOR shall be solely responsible for obtaining all necessary approvals and permits to complete each individual project.

**3.5** The CONTRACTOR shall remain appropriately licensed and/or employ the services of a subcontractor who is appropriately licensed throughout the course of the Project. Failure to maintain all required licenses shall entitle the COUNTY, at its option, to terminate this Agreement.

**3.6** Upon receipt of a Cost Estimate from the COUNTY, the CONTRACTOR shall acquaint itself with the nature and location of the work; including, but not limited to those bearing upon transportation, disposal, handling and storage of materials; availability of labor, water, electric power, and roads; and uncertainties of weather or similar physical conditions at the site; the character of equipment and facilities needed preliminary to and during the completion of the Project. The CONTRACTOR further acknowledges that the CONTRACTOR will satisfy itself as to the character, quality and quantity of surface and subsurface materials, obstacles or conditions of the site. Any failure by the CONTRACTOR to acquaint itself with any aspect of the work or with any of the applicable conditions shall not relieve the CONTRACTOR from responsibility for adequately evaluating the difficulty or cost of successfully performing the work required, nor shall it be considered a basis for any claim for additional time or compensation. The COUNTY assumes no responsibility for any conclusions or interpretations made by the CONTRACTOR on the basis of the information made available by the COUNTY. The

COUNTY also assumes no responsibility for any understanding or representations made by its officers or agents during or prior to the execution of this contract, unless such understanding or interpretations are made in writing and incorporated herein by reference.

**3.7** In the event of any conflict between the drawings and specifications contained within this Agreement, the following shall govern:

A. Addenda shall supersede all other contract documents to the extent specified in the addenda. Subsequent addenda shall supersede prior to addenda only to the extent specified therein.

B. Drawings and specifications are intended to agree and be mutually complete. Any item not contained within the drawings, but contained in the specifications, or vice-versa, shall be provided and/or executed as shown in either the drawing or specification at no extra costs to the COUNTY. Should anything not included in either the drawing and/or the specifications be necessary for the proper construction and/or operation of the project as herein specified, or should any error or disagreement between the specifications and drawings exist or appear to exist, the CONTRACTOR shall not derive unjust benefit thereby, or use such disagreement counter to the best interests of the COUNTY. The CONTRACTOR shall immediately notify the COUNTY's Project Manager of any discrepancy and await the Project Manager's direction before proceeding with the work in question.

**3.8** CONTRACTOR acknowledges and agrees that CONTRACTOR shall utilize the U.S. Department of Homeland Security's E-Verify system in accordance with the terms governing use of the system to confirm the employment eligibility of:

A. All persons employed by the CONTRACTOR during the term of this Agreement to perform employment duties within Lake County; and

B. All persons, including subcontractors, assigned by the CONTRACTOR to perform work pursuant to the contract.

**3.9** CONTRACTOR acknowledges and agrees that, in accordance with Section 255.099, Florida Statutes, if any individual project assigned to CONTRACTOR is being supported in whole or in part by State funding the CONTRACTOR shall give preference to the employment of state residents in the performance of the work on the project if state residents have substantially equal qualifications to those of non-residents. If the CONTRACTOR is required to employ state residents, the CONTRACTOR shall contact the Department of Economic Opportunity to post the employment needs in the State's job bank system. However, in work involving the expenditure of federal aid funds, this section may not be enforced in such a manner as to conflict with or be contrary to federal law prescribing a labor preference to honorably discharged soldiers, sailors, or marines, or prohibiting as unlawful any other preference or discrimination among the citizens of the United States.

## Article 4. Payment

**4.1** The COUNTY shall pay and CONTRACTOR shall accept, as full and complete payment for the timely and complete performance of its obligations hereunder the fixed lump sum prices set forth in each Cost Estimate; provided however that the Contractor's Adjustment Factor shall remain fixed at the rate identified in **Exhibit B**, attached hereto and incorporated herein by reference. Upon assignment of each individual project to the CONTRACTOR, the COUNTY shall provide the CONTRACTOR with a Project Pricing Form and Directions. A sample Project Pricing Form and Directions are set forth in **Exhibit C**, attached hereto and incorporated herein by reference. The final compensation as determined hereunder for each individual project shall represent the CONTRACTOR'S base bid, including all applicable taxes, materials, labor, fuel, equipment, supervision, management and overhead, unless a duly authorized change order has been issued in accordance with the COUNTY'S purchasing policies and procedures. The material quantities must be verified by the CONTRACTOR for work performed and any related receipts submitted with the payment request. A copy of such policies and procedures shall be made available to the CONTRACTOR upon request. Further payment information is included in **Exhibit A**.

**4.2** The CONTRACTOR shall submit their invoice to the **Facilities and Fleet Management Department, 32400 C.R. 473 Leesburg, FL 34788**, after all work has been completed. Invoices shall be hand delivered or mailed. Faxes &/or emails will not be accepted for invoicing. In addition to the general invoice requirements set forth below, the invoice shall reference the specific work element for which billing has been initiated and, if required, include a copy of the acceptance document that was signed by an authorized representative of the COUNTY at the time the specific work element was accepted. Submittal of the invoice shall not exceed thirty (30) calendar days from the delivery of the goods or services. Under no circumstances shall the invoices be submitted to the COUNTY in advance of the work being completed or delivery and acceptance of the items.

**4.3** All invoices shall contain the contract and/or purchase order number, date and location of delivery or service. The CONTRACTOR shall also submit with their invoice a completed "Certification of Payment to Subcontractors and Suppliers" form. Failure to submit invoices and certification form in the prescribed manner will delay payment, and the CONTRACTOR may be considered in default of this Agreement. Payments shall be tendered in accordance with the Florida Prompt Payment Act, Part VII, Chapter 218, Florida Statutes.

**4.4** The COUNTY shall make payment on all undisputed invoices in accordance with the Florida Prompt Payment Act, Part VII, Chapter 218, Florida Statutes. The COUNTY shall not make payment on partial delivery of supplies, services, or materials. In the event the CONTRACTOR has utilized subcontractors on any project not covered under a performance and payment bond, the CONTRACTOR shall provide a *Certification of Payment to Subcontractors* along with the invoice prior to the invoice being paid.

**4.5** In the event any part of this Agreement, or individual project, is to be funded by federal, state, or other local agency monies, the CONTRACTOR hereby agrees to cooperate with the

COUNTY in order to assure compliance with all requirements of the funding entity applicable to the use of the monies, including providing access to and the right to examine relevant documents related to the Project and as specifically required by the Federal or state granting agency, and receiving no payment until all required forms are completed and submitted. A copy of the requirements shall be supplied to the CONTRACTOR by the COUNTY upon request.

## Article 5. County Responsibilities

**5.1** COUNTY shall designate a County staff member to act as COUNTY'S Project Manager. It is agreed to by the parties that the COUNTY'S Project Manager will decide all questions, difficulties, or disputes, of whatever nature, which may arise relative to the interpretation of the plans, construction, prosecution and fulfillment of the Scope of Services, and as to the character, quality, amount and value of any work done, and materials furnished, under or by reason of this Agreement. The COUNTY'S Project Manager may appoint representatives as desired that will be authorized to inspect all work done and all materials furnished.

**5.2** COUNTY shall pay in accordance with the provisions set forth in this Agreement.

**5.3** COUNTY retains the right to inspect all work to verify compliance with the contract documents. Such inspection may extend to all or any part of the work and to the manufacture, preparation or fabrication of the materials to be used.

## Article 6. Construction Provisions

**6.1** Intent of the Contract Documents.

A. For purposes of this Agreement, the term "contract documents" includes all bid documents, drawings, the Statement of Work, attachments to this Agreement, and provisions within this Agreement, along with any change orders or amendments to this Agreement.

B. It is the intent of the contract documents to describe a functionally complete project which defines the scope of work. 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, material 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 specified or by implication, shall mean the latest standard specification, manual, code, law or regulation in effect at the time the work performed, unless specifically stated otherwise herein.

C. The contract documents and all referenced standards cited therein are essential parts of the contract requirements. A requirement occurring in one is binding as though occurring in all.

**6.2** Errors and Omissions. The CONTRACTOR shall not take advantage of any apparent error or omission in the contract documents. If any error or omission appears in the contract documents, the CONTRACTOR shall immediately notify the COUNTY in writing of such errors or omissions. In the event the CONTRACTOR knows or should have known of any error or omission and failed to provide such notification, the CONTRACTOR shall be deemed to have waived any claim for increased time or compensation the CONTRACTOR may have had and the CONTRACTOR shall be responsible for the results and the costs of rectifying any such error or omission.

**6.3** Contractor Personnel.

A. The CONTRACTOR shall assure that all personnel are competent, careful and reliable. All personnel must have sufficient skill and experience to perform their assigned task properly and satisfactorily and to operate any equipment involved, and shall make due and proper effort to execute the work in the manner prescribed in the contract documents.

B. When the COUNTY determines that any person is incompetent, unfaithful, intemperate, disorderly or insubordinate, such person shall, upon written notice, be discharged from the project and shall not again be employed on the project without the written consent of the COUNTY. Should the CONTRACTOR fail to remove such person or persons, the COUNTY may withhold all payments which are or may become due, or may suspend the work with approval of the COUNTY until such orders are complied with.

C. The CONTRACTOR shall at all times have at the Project as its agent a competent superintendent capable and thoroughly experienced in the type of work being performed, who shall receive instructions from the COUNTY. The superintendent shall supervise all trades, direct all project activities, establish and maintain installation schedules, and provide the COUNTY's Project Manager with progress reports as requested. The superintendent shall have full authority to execute the orders or directions of the COUNTY, and if applicable to supply promptly any materials, tools, equipment, labor and incidentals which may be required. Such superintendent shall be furnished regardless of the amount of work sublet. The CONTRACTOR's superintendent shall speak, write, and understand English and shall be on the job site during all working hours.

D. No alcoholic beverages or drugs are permitted on any COUNTY properties. Evidence of alcoholic beverages or drug use by an individual will result in immediate termination from the job site.

E. The CONTRACTOR shall maintain a dress code for their employee's with a minimum of shirts, pants, and work shoes/boots, in decent condition, at all times while the work is being performed. Additionally, there may be times in which the COUNTY will require all workers on a particular individual project to wear ID badges. The COUNTY shall supply the ID badges. If ID badges are necessary, the CONTRACTOR will ensure that all workers employed for that particular project, whether employed by the CONTRACTOR or a subcontractor, are

scheduled, prior to assignment, for an appointment during the COUNTY'S normal working hours with the COUNTY'S Project Manager, to process and receive ID badges. All new workers must be assigned an ID badge prior to starting work for that project. The CONTRACTOR shall be aware that it may take up to one (1) week to receive ID badges after required information has been received and pictures have been taken.

F. If required by the COUNTY for an individual project, the CONTRACTOR shall provide the COUNTY with a complete list of personnel, subcontractors, and representatives of the CONTRACTOR that shall be utilized for that project. The list shall include a fully name, address, telephone number, copy of social security card, and a copy of driver's license/State of Florida identification card/valid passport/valid work visa. Background checks may be performed, on a project by project basis, by the Lake County Sheriff's Office at no expense to the CONTRACTOR. At no time shall any person associated with the CONTRACTOR be granted access to perform work on COUNTY property prior to a completed background check. All decisions related to the approval of background checks shall be made by the Lake County Sheriff's Office. All decisions are final. The CONTRACTOR must remove any employee, with access to COUNTY facilities, from COUNTY service who is convicted of a felony crime during the time this Agreement is in effect. Failure of the CONTRACTOR to obtain background checks if specified may result in termination of this Agreement. The COUNTY reserves the right to require immediate removal of any employee from COUNTY property it deems unfit for service for any reason. This right is non-negotiable and the CONTRACTOR agrees to this condition by accepting this Agreement. The CONTRACTOR shall have enough qualified people with current background checks so as to be able to provide a replacement within twenty-four (24) hours.

**6.4** Subcontractors.

A. Within five (5) calendar days after the award of any subcontract, the CONTRACTOR shall deliver to the COUNTY a statement setting forth the name and address of the subcontractor, a summary description of the work subcontracted and a copy of the subcontract.

B. The CONTRACTOR shall be fully responsible to the COUNTY for the acts and omissions of the CONTRACTOR's subcontractors and of persons either directly or indirectly employed by them.

C. All subcontractors, for as long as the subcontractor is working on the job site, shall have at least one supervisor/foreman on the job site that shall speak and understand English.

D. The CONTRACTOR shall cause its subcontractors and suppliers to comply with the project schedule and applicable sub-schedules.

E. Releases of liens from subcontractors shall be required before final payment will be released.

**6.5** Completion of the Scope of Services. The CONTRACTOR shall give the work the attention necessary to assure the scheduled progress and shall cooperate fully with the COUNTY and with other contractors on the job site. All work shall be done in accordance with the contract documents. When not specifically identified in the technical specifications, such materials and equipment shall be of a suitable type and grade for the purpose. All material, workmanship, and equipment shall be subject to the inspection and approval of the COUNTY.

**6.6** Emergencies. Not Applicable.

**6.7** Safety.

A. The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work and for complying with all requirements of the Occupational Safety and Health Administration (OSHA) and any other industry, federal, state or local government standards, including the National Institute of Occupational Safety Hazards (NIOSH), and the National Fire Protection Association (NFPA). The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to persons or property. The CONTRACTOR shall be aware that while working for the COUNTY, representatives from agencies such as OSHA are invitees and need not have warrants or permission to enter the work site. Any fines levied by the above-mentioned authorities for failure to comply with these requirements shall be borne solely by the CONTRACTOR.

B. CONTRACTOR certifies that all material, equipment, etc. to be used in an individual project meets all Occupational Safety and Health Administration (OSHA) requirements. The CONTRACTOR further certifies that if any of the material, equipment, etc. is found to be deficient in any OSHA requirement in effect on the date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the CONTRACTOR. All standard equipment, work operations, safety equipment, personal protective equipment, and lighting required or mandated by State, Federal, OSHA, or Americans with Disabilities Act (ADA) regulations must be provided and used by the CONTRACTOR and its employees

C. All safety devices installed by the manufacturer on equipment utilized by the CONTRACTOR on the jobsite shall be in place and in proper working order at all times. If the COUNTY determines that the equipment is deficient in safety devices, the CONTRACTOR shall be notified immediately. The CONTRACTOR shall immediately repair, or remove the equipment from service until the deficiency is corrected to the satisfaction of the COUNTY.

D. The COUNTY may periodically monitor the work site for safety. Should there be safety and/or health violations, the COUNTY shall have the authority, but not the duty, to require the CONTRACTOR to correct the violation in an expeditious manner. If there is any situation that is deemed unsafe by the COUNTY, the project will be shut down immediately upon notice and will not resume work until the unsafe condition has been remedied.

E. Should the work site be in a hazardous area, the COUNTY shall take reasonable actions to furnish the CONTRACTOR with information concerning hazards such as the types or the identification of known toxic material, machine hazards, Material Safety Data Sheets, or any other information that would assist the CONTRACTOR in the planning of a safe work site. The CONTRACTOR retains the ultimate responsibility to ensure all work is performed in a manner consistent with all applicable safety standards and directives.

F. CONTRACTOR shall erect and maintain, as required by existing conditions and contract performance, safeguards for safety and protection such as barricades, danger signs, a construction fence, and other warnings against hazardous conditions.

G. CONTRACTOR shall be responsible for the removal of all surplus material and debris from the Project site at the end of each work day. All costs associated with clean-up and debris removal shall be included in the lump sum price stated elsewhere herein. The CONTRACTOR must have ample cleaning supplies and a working vacuum cleaner on-site for clean-up. At no time shall the CONTRACTOR use COUNTY cleaning supplies or equipment. Upon final completion, the CONTRACTOR shall thoroughly clean-up all areas where work has been involved as mutually agreed with the COUNTY'S Project Manager. If such deficiencies are not corrected as part of this process, the COUNTY shall remove the remaining debris and surplus materials and deduct the associated costs from the amount due the CONTRACTOR.

H. CONTRACTOR shall confine all equipment, materials and operations to the project site and areas identified in the Contract documents. CONTRACTOR shall assume all responsibility for any damage to any such area resulting from the performance of the work.

I. CONTRACTOR is responsible for notifying the COUNTY of any hazardous materials used on the work site and providing the COUNTY a copy of the Material Safety Data Sheets (MSDS). Any spillage of hazardous chemicals and/or wastes by the CONTRACTOR shall be reported immediately to the COUNTY and cleaned up in accordance with all State and Federal Regulations. The cost of cleanup of any spillage of hazardous chemicals and/or wastes caused by the CONTRACTOR shall be the sole responsibility of the CONTRACTOR and the COUNTY shall share no responsibility of these costs. A copy of the complete report showing compliance with local, state, and federal agencies shall be given to the COUNTY. If any hazardous chemicals or conditions are discovered during the normal operation, it is the responsibility of the CONTRACTOR to immediately contact the COUNTY with a description and location of the condition. The MSDS shall include the following information:

1. The chemical name and the common name of the toxic substance
2. The hazards or other risks in the use of the toxic substance, including the potential for fire, explosion, corrosiveness, and reactivity.
3. The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by the exposure to the toxic substances.
4. The primary route of entry and symptoms of exposure.

5. The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure;
6. The emergency procedure for spills, fire, disposal and first aid.
7. A description in lay terms of the known specified potential health risks posed by the toxic substance intended to alert any person reading this information.
8. The year and month, if available, that the information was compiled, and the name, address and emergency telephone number of the manufacturer responsible for preparing the information.

J. The CONTRACTOR shall designate a competent person of its organization whose duty shall be the prevention of accidents. This person shall be literate and able to communicate fully in the English language because of the necessity to read job instructions and signs, as well as the need for conversing with management personnel. This person shall be the CONTRACTOR'S Superintendent unless otherwise designated in writing to the COUNTY'S Project Manager. All communications to the Superintendent shall be as binding as if given to the CONTRACTOR.

**6.8** Traffic Maintenance.

A. In the event that any of the work is conducted within any public right of way the CONTRACTOR shall be responsible for proper Maintenance of Traffic (MOT). Unless otherwise specified, the standard specifications to be used for the work shall be as promulgated by the Florida Department of Transportation (F.D.O.T).

B. Maintenance of traffic shall be the responsibility of the CONTRACTOR, is part of the CONTRACTOR'S proposal price, and shall conform to F.D.O.T.'s most current editions of "STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION," 2015 edition (or latest edition), or FDOT "ROADWAY AND TRAFFIC DESIGN STANDARDS," 2015 (or latest edition), or FDOT "MANUAL OF UNIFORM MINIMUM STANDARDS FOR DESIGN, CONSTRUCTION AND MAINTENANCE FOR STREETS AND HIGHWAYS," 2015 (or latest edition), Federal Highway Administration (FHWA) "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD)," 2015 (or latest edition), and all supplemental specifications thereto. These documents can be ordered from F.D.O.T, Maps and Publications Department, 605 Suwannee Street, Tallahassee, Florida, 32399-0450, or by going to the F.D.O.T. website at: www.dot.state.fl.us/mapsandpublications.

C. All costs associated with MOT must be included in the CONTRACTOR'S proposal price. No separate line items for MOT will be included in the cost estimate. If the CONTRACTOR does not comply with the F.D.O.T. and the F.H.W.A (i.e. signs, qualified flaggers and/or barricades), the COUNTY reserves the right to direct the CONTRACTOR to cease operation until deficiencies are corrected. In addition, no road closures shall be allowed except in the case of emergencies.

D. If the CONTRACTOR feels that assistance from an off duty police officer is needed, it shall be the responsibility of the CONTRACTOR to hire and pay for this service.

E. All lane closures shall have the prior approval of the COUNTY.

F. The foregoing requirements are to be considered as minimum and the CONTRACTOR'S compliance shall in no way relieve the CONTRACTOR of final responsibility for providing adequate traffic control devices for the protection of the public and CONTRACTOR'S employees throughout the work area.

G. The use of public roads and streets by the CONTRACTOR shall provide a minimal inconvenience to the public and traffic. Furthermore, if the CONTRACTOR is utilizing the road by driving the slow moving equipment, the operator shall allow no more than three (3) vehicles to be backed up behind them at any time before pulling to the side to let traffic pass.

**6.9** Underground Utilities. Any required ground digging or subsurface work shall be done in accordance with Chapter 556, Florida Statutes. It shall be the responsibility of the CONTRACTOR to have all underground utilities located before any work shall begin. This can be done by contacting Sunshine State One Call. They may be reached by calling 1-800-432-4770. The repairs of any damaged underground utilities as a result of the work being performed by the CONTRACTOR shall be the responsibility of the CONTRACTOR. The proper utility company shall be contacted immediately to expedite the repairs, if damage has occurred. The COUNTY shall also be notified by telephone at the earliest opportunity and shall be followed up with a written explanation of the incident within two (2) days.

**6.10** General Inspection Requirements.

A. Due to the nature of this Agreement, the COUNTY shall at the time of establishment of need, require the CONTRACTOR to become fully informed as to the nature and extent of the work required and its relation to any other work in the area, including possible interference from other site activities. Arrangement for CONTRACTOR'S inspection of facilities or sites and/or activity schedules may be secured from the user department. Failure to visually inspect the facilities or sites may be cause for disqualification of CONTRACTOR on that individual project.

B. The CONTRACTOR shall furnish the COUNTY with every reasonable accommodation for ascertaining whether the work performed and materials used are in accordance with the requirements and intent of the contract documents. If the COUNTY so requests, the CONTRACTOR shall, at any time before final acceptance of the work, remove or uncover such portions of the finished work as may be directed. After examination, the CONTRACTOR shall restore the uncovered portions of the work to the standard required by the specifications. Should the work so exposed or examined prove unacceptable in the opinion of the COUNTY, the uncovering or removal, and the replacing of the covering or making good of the parts removed, shall be at the CONTRACTOR's expense. However, should the work thus exposed or examined prove acceptable in the opinion of the COUNTY, the uncovering or

removing and the replacing or the covering or making good of the parts removed, shall be paid for as unforeseen work.

C. If, during or prior to construction operations, the COUNTY should fail to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject shall in no way prevent the COUNTY's later rejection when such defect is discovered, nor obligate the COUNTY to final acceptance or payment, and the CONTRACTOR shall make no claim for losses suffered due to any necessary removals or repairs of such defects.

D. If, during or prior to construction operations, the COUNTY rejects any portion of the work on the grounds that the work or materials are defective, the COUNTY shall give the CONTRACTOR notice of the defect, which notice may be confirmed in writing. The CONTRACTOR shall then have seven (7) calendar days from the date the notice is given to correct the defective condition. If the CONTRACTOR fails to correct the deficiency within the seven (7) calendar days after receipt of the notice, the COUNTY may take any action necessary, including correcting the deficient work utilizing another contractor, returning any non-compliant goods to the CONTRACTOR at the CONTRACTOR's expense or terminating the contract. The CONTRACTOR shall not assess any additional charge(s) for any conforming action taken by the COUNTY. The COUNTY will not be responsible to pay for any product or service that does not conform to the contract specifications.

E. Should the CONTRACTOR fail to remove and renew any defective materials used or work performed, or to make any necessary corrections in an acceptable manner and in accordance with the contract requirements, within the time indicated in writing, the COUNTY shall have the authority to cause the unacceptable or defective materials or work to be corrected as necessary at the CONTRACTOR's expense. Any expense incurred by the COUNTY, whether direct, indirect or consequential, in making said repairs, removals, or renewals shall be paid for out of any monies due or which may become due to the CONTRACTOR. A change order shall be issued, incorporating the necessary revisions to the contract documents, including an appropriate decrease to the contract amount. Such costs shall include, but not be limited to, costs of repair and replacement of work destroyed or damaged by correction, removal or replacement of the CONTRACTOR's defective work and additional compensation due the COUNTY. The CONTRACTOR shall not be allowed an extension of the contract time because of any delay in performance of the Project attributable to the exercise by the COUNTY of the COUNTY's rights and remedies hereunder. If the CONTRACTOR fails to honor the change order, the COUNTY may terminate the contract for default.

F. All work performed and all materials furnished shall be in reasonably close conformity with the tolerances indicated in the specifications. In the event the COUNTY'S Project Manager finds the materials or the finished product in which the materials are used and not within reasonably close conformity to the specifications, the COUNTY'S Project Manager will then make a determination if the work shall be accepted and remain in place. In this event, the COUNTY'S Project Manager will document the basis of acceptance by a Change Order that will provide for an appropriate deduction as needed in the contract price for such work or

materials as the COUNTY'S Project Manager deems necessary to conform to the determination based on the COUNTY'S Project Manager's professional judgment.

G. When the United States Government or the State of Florida is to pay a portion of the cost of construction, the work will be subject to such inspection by federal or state representatives as deemed necessary, but such inspections will in no case make the United States Government or the State of Florida a party to this contract.

**6.11** Project Materials and Storage.

A. Unless otherwise specified within the contract documents, all materials to be used to complete the Project, except where recycled content is specifically requested, shall be new, unused, of recent manufacture, and suitable for its intended purpose. All goods shall be assembled, fully serviced and ready for operation when delivered. In the event any of the materials supplied by the CONTRACTOR are found to be defective or do not conform to specifications: (1) the materials may be returned to the CONTRACTOR at the CONTRACTOR's expense and the contract cancelled or (2) the COUNTY may require the CONTRACTOR to replace the materials at the CONTRACTOR's expense.

B. Materials shall be placed to permit easy access for proper inspection and identification of each shipment. Any material which has deteriorated, become damaged, or is otherwise unfit for use, as determined by the COUNTY, shall not be used in the work, and shall be removed from the site by the CONTRACTOR at the CONTRACTOR's expense. Until incorporated into the work, materials shall be the sole responsibility of the CONTRACTOR and the CONTRACTOR shall not be paid for such materials until incorporated into the work. If any chemicals, materials or products containing toxic substances are to be used at any time, the CONTRACTOR shall furnish a Material Safety Data Sheet to the COUNTY prior to commencing such use.

C. All unusable materials and debris shall be removed from the premises at the end of each workday and disposed of in an appropriate manner.

**6.12** Time for Completion and Extensions.

A. The CONTRACTOR shall diligently pursue the completion of the work and coordinate the work being done on the project by its subcontractors and material suppliers, as well as coordinate the CONTRACTOR's work with the work of other contractors so that the CONTRACTOR's work or the work of others shall not be delayed or impaired. The 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. The time for completion requirements are contained in **Exhibit A.**

B. Should the CONTRACTOR be obstructed or delayed in the completion of the work as a result of unforeseeable causes beyond the control of the CONTRACTOR, and not due to the CONTRACTOR's fault or neglect, the CONTRACTOR shall notify the COUNTY in

writing within twenty-four (24) hours after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which the CONTRACTOR may have had to request a time extension.

C. If the CONTRACTOR complies with the twenty-four (24) hour notice requirement, the COUNTY shall ascertain the facts and the extent of the delay being claimed and recommend an extension to the contract time when, in the COUNTY's sole judgment, the findings of fact justify such an extension. The CONTRACTOR shall cooperate with the COUNTY's investigation of the delays by providing any schedules, correspondence or other data that may be required to complete the findings of fact. Extensions to the contract time may be granted only for those delays which impact the CONTRACTOR's construction schedule. Extensions of contract time, if approved by the COUNTY, must be authorized by written change order.

**6.13** Changes in the Scope of Work.

A. Without invalidating the contract, the COUNTY may at any time, by written change order, in accordance with the COUNTY's Purchasing Policy and Procedures, increase or decrease the scope of the work and the contract price or time may be adjusted accordingly. For changes in work requested by CONTRACTOR, the CONTRACTOR shall prepare and submit change order requests for COUNTY approval. Each change order shall include time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project. Both the COUNTY and the CONTRACTOR shall execute the change order.

B. The value of such extra work or change shall be determined by the contract unit values, if applicable unit values are set forth in this Agreement. The amount of the change shall be computed from such values and added to or deducted from the contract price.

C. If the COUNTY and the CONTRACTOR are unable to agree on the change order for requested change, the CONTRACTOR shall, nevertheless, promptly perform the change as directed in writing by the COUNTY. If the CONTRACTOR disagrees with the COUNTY's adjustment determination, the CONTRACTOR must make a claim pursuant to the Claims and Disputes section herein, or else be deemed to have waived any claim on this matter the CONTRACTOR might have otherwise had.

D. For work not contemplated by the original Agreement, the amount of an 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 such case, the CONTRACTOR shall keep and present to the COUNTY an itemized accounting together with appropriate supporting data. In the event such changed work is performed by a subcontractor, a maximum ten percent (10%) markup for all overhead and profit for all 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

overall maximum markup of fifteen percent (15%) of the amount of changed work. All compensation due the CONTRACTOR and any subcontractor or sub-subcontractor for field and home office overhead is included in the markups listed above.

E. The COUNTY shall not be liable to the CONTRACTOR for any increased compensation in the absence of a written change order executed in accordance with COUNTY policy. The payment authorized by such a change order shall represent full and complete compensation to the CONTRACTOR for labor, materials, incidental expenses, overhead, profit, impact costs and time associated with the work authorized by such change order.

F. Execution by the CONTRACTOR of a properly authorized change order shall be considered a waiver of all claims or requests for additional time or compensation for any activities prior to the time of execution related to items included in the change order.

G. Upon receipt of an approved change order, changes in the Scope of Work shall be promptly performed. All changes in work shall be performed under the terms and conditions of this Contract.

**6.14** Claims and Disputes.

A. Claims by the CONTRACTOR shall be made in writing to the COUNTY within two (2) business days, unless another provision of this Agreement sets forth a different time frame, after the commencement of the event giving rise to such claim or the CONTRACTOR shall be deemed to have waived the claim. Written supporting data shall be submitted to the COUNTY within ten (10) calendar days after the occurrence of the event, unless the COUNTY grants additional time in writing, or the CONTRACTOR shall be deemed to have waived the claim. All claims shall be priced in accordance with the section in this document entitled "Changes in Work".

B. The CONTRACTOR shall proceed diligently with its performance as directed by the COUNTY, regardless of any pending claim, action, suit, or administrative proceeding, unless otherwise agreed to by the COUNTY in writing. The COUNTY shall continue to make payments on the undisputed portion of the contract in accordance with the contract documents during the pendency of any claim.

C. Claims by the CONTRACTOR shall be resolved in the following manner: (1) Upon receiving the claim and supporting data, the COUNTY shall within fifteen (15) business days respond to the claim in writing stating that the claim is either approved or denied. If denied, the COUNTY shall specify the grounds for denial. The CONTRACTOR shall then have fifteen (15) calendar days in which to provide additional supporting documentation, or to notify the COUNTY that the original claim stands as is. (2) If the claim is not resolved, the COUNTY may, at its option, choose to submit the matter to mediation. A mediator shall be mutually selected by the parties and each party shall pay one-half (1/2) the expense of mediation. If the COUNTY declines to mediate the dispute, the CONTRACTOR may bring an action in the County or Circuit Court sitting in Lake County, Florida.

D. Claims by the COUNTY against the CONTRACTOR shall be made in writing to the CONTRACTOR as soon as the event leading to the claim is discovered by the COUNTY. Written supporting data shall be submitted to the CONTRACTOR. All claims shall be priced in accordance with the provisions of the section in this document entitled "Changes in Work". The CONTRACTOR shall respond in writing within fifteen (15) business days of receipt of the claim. If the claim cannot be resolved, the COUNTY shall have the option to submit the matter to mediation as set forth in (C)(2) above.

E. Arbitration shall not be considered as a means of dispute resolution.

F. **NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE COUNTY BY REASON OF ANY DELAYS.** No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the work shall relieve the CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from the COUNTY. The CONTRACTOR expressly acknowledges and agrees that the CONTRACTOR shall receive no damages for delay. However, this provision shall not preclude recovery or damages by the CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of the COUNTY. Otherwise, CONTRACTOR shall be entitled to extensions of the contract time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

**6.15** Acceptance of the Work and Final Payment. The work delivered and services rendered under this Agreement shall remain the property of the CONTRACTOR and shall not be deemed complete until a physical inspection and actual usage of the product(s) and/or service(s) is (are) accepted by the COUNTY and shall be in compliance with the terms herein, fully in accord with the specifications and of the highest quality. Any goods and/or services purchased under this Agreement may be tested/inspected for compliance with the specifications listed.

A. Final Inspection. When all materials have been furnished, all work has been performed, and the construction contemplated by the contract has been satisfactorily completed, the COUNTY shall make the final inspection. The final inspection shall be completed within five (5) business days of receipt of notification from the CONTRACTOR that the project is ready. The COUNTY shall notify the CONTRACTOR if necessary of any deficiencies with the project, and the CONTRACTOR shall correct all deficiencies before final acceptance and payment is made.

B. Maintenance of Work. The CONTRACTOR shall maintain all work in as-new condition until the final inspection is completed and the work is accepted by the COUNTY. All insurance shall be maintained until final acceptance by the COUNTY.

C. Final Acceptance. When the Project or any portion thereof, as designated by the COUNTY, is ready for its intended use, the COUNTY and any other invited parties shall make an inspection of the Project, to verify its completeness and develop a punch list of items needing

completion or correction before final payment will be made. The CONTRACTOR shall have ten (10) calendar days to correct all deficiencies. An eighty dollar ($80.00) inspection fee shall be applied for the second inspection and any required re-inspection. The COUNTY shall have the right to exclude the CONTRACTOR from those portions of the work designated as complete after the inspection; provided, however, that the CONTRACTOR will have reasonable access for the time allotted by the COUNTY to complete or correct items on the punch list.

When the work provided for under the contract has been completely performed by the CONTRACTOR, and the final inspection has been made by the COUNTY, a final invoice will be prepared by the CONTRACTOR. The amount of this invoice, less any sums that may have been deducted or retained under the provisions of the contract, will be paid to the CONTRACTOR in accordance with Article 4 of this Agreement, and after the CONTRACTOR has agreed in writing to accept the balance due, as determined by the COUNTY, as full settlement of the account under the contract and of all claims in connection therewith. Occupancy by the COUNTY alone does not constitute final acceptance.

D. Waiver of Claims. The CONTRACTOR's acceptance of final payment shall constitute a full waiver of any and all claims by the CONTRACTOR against the COUNTY arising out of the contract or otherwise related to the project, except those previously made in writing and identified by the CONTRACTOR as unsettled at the time the final estimate is prepared. Neither the acceptance of the work nor payment by the COUNTY shall be deemed a waiver of the COUNTY's rights to enforce any continuing obligations of the CONTRACTOR or to the recovery of damages for defective work not discovered by the COUNTY at the time of final inspection.

E. Termination of Contractor's Responsibilities. The contract will be considered complete when all work has been completed and accepted by the COUNTY and all warranty periods have expired. The CONTRACTOR will then be released from further obligation except as set forth in this Agreement.

F. Recovery Rights Subsequent to Final Payment. The COUNTY reserves the right, should an error be discovered in the invoice, or should proof of defective work or materials used by or on the part of the CONTRACTOR be discovered after the final payment has been made, to claim and recover from the CONTRACTOR by process of law, such sums as may be sufficient to correct the error or make good the defects in the work and materials, including any fees or costs associated with the additional services of the COUNTY.

**6.16** Warranties. All warranties shall begin on the date of the COUNTY's acceptance. The CONTRACTOR shall obtain and assign to the COUNTY all express warranties given to the CONTRACTOR or any subcontractors by any material suppliers, equipment or fixtures to be incorporated into the project. The CONTRACTOR warrants to the COUNTY 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 defects and in conformance with the contract documents. The CONTRACTOR further warrants to the COUNTY 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 the contract documents. This warranty requirement shall remain in force for the full period identified above, regardless of whether CONTRACTOR is still under contract at the time of the defect. These warranties are in addition to those implied warranties to which the COUNTY is entitled as a matter of law. Further, a specific warranty period is included as a requirement as follows:

A. If sod is used as part of an individual project, it shall be warranted to be free of noxious and invasive weeds, disease, and insects. If pests and/or noxious weeds manifest themselves within sixty (60) days of placement of the sod, the CONTRACTOR shall treat the affected areas. The process for treating these areas shall be approved by the COUNTY. If the sod does not meet any of the required specifications, the CONTRACTOR shall be responsible to replace it at no expense to the COUNTY. It shall be the responsibility of the CONTRACTOR to insure that the sod is sufficiently established as previously described within these specifications. If the sod dies or does not become established the CONTRACTOR shall be responsible for the replacement at no cost to the COUNTY.

B. Correcting Defects Covered Under Warranty. The CONTRACTOR shall be responsible for promptly correcting any deficiency, at no cost to the COUNTY, within five (5) calendar days after the COUNTY notifies the CONTRACTOR of such deficiency in writing. If the CONTRACTOR fails to honor the warranty and/or fails to correct or replace the defective work or items within the period specified, the COUNTY may, at its discretion, notify the CONTRACTOR in writing that the CONTRACTOR may be debarred as a COUNTY vendor, and/or become subject to contractual default if the corrections or replacements are not completed to the satisfaction of the COUNTY within five (5) calendar days of receipt of the notice. If the CONTRACTOR fails to satisfy the warranty within the period specified in the notice, the COUNTY may (a) place the CONTRACTOR in default of its contract and/or (b) procure the products or services from another source and charge the CONTRACTOR for any additional costs that are incurred by the COUNTY for this work or items, either through a credit memorandum or through invoicing.

**6.17** Liquidated Damages. Unless otherwise agreed to, weather events are specifically excluded as excused cause for delay under this agreement and no additional days shall be given for rain days. If the deficiencies have been noted and the remedies have not been completed within the contracted time, the COUNTY may send out a notification notifying CONTRACTOR of assessment of Liquidated Damages that can be applied for any day over the time allowed under this Agreement.

The COUNTY and the CONTRACTOR recognize that, since time is of the essence for this agreement, the COUNTY will suffer financial loss if the work is not completed within the time specified. The COUNTY will be entitled to assess, as Liquidated Damages, but not as a penalty, for each calendar day after the scheduled completion date the project continues. The project shall be deemed to be completed on the date the work is considered complete to the satisfaction of the COUNTY. The CONTRACTOR hereby expressly waives and relinquishes any right which it may have to seek to characterize the Liquidated Damages as a penalty. The parties agree that the Liquidated Damages sum represents a fair and reasonable estimate of the COUNTY'S actual

damages at the time of contracting if the CONTRACTOR fails to complete the work in a timely manner. The Liquidated Damages shall be as follows:

| Specific Project Amount | Daily Charge Per Calendar Day |
|---|---|
| $5,000 and under | $ 25 |
| Over $5,000 but less than $10,000 | $ 65 |
| $10,000 or more but less than $20,000 | $ 91 |
| $20,000 or more but less than $30,000 | $121 |
| $30,000 or more but less than $40,000 | $166 |
| $40,000 or more but less than $50,000 | $228 |

COUNTY shall retain from the compensation to be paid to CONTRACTOR the above described sum.

Any CONTRACTOR that is in default for not completing the work within the time specified, at the option of the COUNTY, may not permitted to perform work for the COUNTY until the project is complete and the liquidated damages sum is satisfied.

**6.18** Sanitation. For projects that do not involve interior work, the CONTRACTOR shall be required to provide and maintain adequate sanitary conveniences for the use of persons employed for the Project. These conveniences shall be maintained at all times without nuisance, and their use shall be strictly enforced. The location of these conveniences shall be subject to the COUNTY'S Project Manager's approval. All such facilities shall be installed and maintained in accordance with applicable federal, state, and local laws.

**6.19** Submittals and Equal Products.

A. Submittals of products required for any individual project assigned to the CONTRACTOR hereunder, shall be supplied to the COUNTY for pre-approval prior to the start of the work. These documents shall be provided to the COUNTY at least one (1) week before the installation.

B. If a product or service requested by the COUNTY for a particular project has been identified in the specifications by a brand name, and has not been notated as a "No Substitute," item, such identification is intended to be descriptive and not restrictive, and is to indicate the quality and characteristics of product or service that will be acceptable. If the CONTRACTOR offers an alternate project or service for consideration, such product must be clearly identified by the CONTRACTOR to the COUNTY. The COUNTY shall make a determination whether the alternate meets the salient characteristics of the specifications. An alternate product will not be considered for any item notated "No Substitute."

C. Unless the CONTRACTOR clearly indicates in its response that it is proposing an alternate product, the response shall be considered as offering the same brand name referenced in the specifications. If the CONTRACTOR proposes to furnish an alternate product or service, the

brand name of the product or service to be furnished shall be clearly identified. A formal submittal for the alternate/shop drawings shall be submitted. The evaluation of the alternate and the determination as to acceptability of the alternate product or service shall be the responsibility of the COUNTY and will be based upon information furnished by the CONSULTANT. The COUNTY will not be responsible for locating or securing any information which is not included in the CONTRACTOR'S response. To ensure that sufficient information is available, the CONTRACTOR shall furnish as part of the bid or proposal all descriptive material by providing the manufacturer specification sheets so the COUNTY can make an informed determination whether the product offered meets the salient characteristics required by the specifications. Failure to do so will require the use of the specified products.

**6.20** Fees. The following is a list of fees that may be assessed to the CONTRACTOR during the term of this Agreement. These fees are assessed to help offset the additional costs associated with COUNTY labor and vehicle usage required for unnecessary inspections or missed appointments. The fees, if any, shall be deducted from the final invoices.

| | |
|---|---|
| A. Missing scheduled appointments: | $70.00/day |
| B. Failure to respond to emergency calls | $250.00/day |
| C. Late to emergency calls | $36.00/hour |
| D. Inspected unacceptable workmanship | $55.00/inspection |
| E. Failure to provide documents or reports | $75.00/day |
| F. Failure to pass re-inspections | $250.00/day |

Any re-inspection fee charged to the County by other agencies having jurisdiction over the project, shall additionally be charged back to the CONTRACTOR.

## Article 7. Special Terms and Conditions

**7.1** Termination. This Agreement may be terminated by the COUNTY upon ten (10) days advance written notice to the other party; but if any work or service/Task hereunder is in progress but not completed on the date of termination, then this Agreement may be extended upon written approval of the COUNTY until said work or service(s)/Task(s) is completed and accepted.

A. Termination for Convenience. In the event this Agreement is terminated or cancelled upon the request and for the convenience of COUNTY with the required ten (10) day advance written notice, COUNTY shall reimburse CONTRACTOR for actual work satisfactorily completed.

B. Termination for Cause. Termination by COUNTY for cause, default, or negligence on the part of CONTRACTOR shall be excluded from the foregoing provision. Termination costs, if any, shall not apply. The ten (10) day advance notice requirement is waived in the event of termination for cause.

C. Termination Due to Unavailability of Funds in Succeeding Fiscal Years. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, this Agreement shall be canceled and the CONTRACTOR shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services/Tasks delivered under this Agreement.

**7.2** Assignment of Agreement This Agreement shall not be assigned except with the written consent of the COUNTY'S Procurement Services Director. No such consent shall be construed as making the COUNTY a party to the assignment or subjecting the COUNTY to liability of any kind to any assignee. No assignment shall under any circumstances relieve the CONTRACTOR of liability and obligations under this Agreement and all transactions with the COUNTY must be through the CONTRACTOR. Additionally, unless otherwise stipulated herein, the CONTRACTOR shall notify and obtain prior written consent from the COUNTY prior to being acquired or subject to a hostile takeover. Any acquisition or hostile takeover without the prior consent of the COUNTY may result in termination of this Agreement for default.

**7.3** Insurance. The CONTRACTOR shall purchase and maintain at all times during the term of this Agreement, without cost or expense to the COUNTY, policies of insurance with a company or companies authorized to do business in the State of Florida, and which are acceptable to the COUNTY, insuring the CONTRACTOR against any and all claims, demands, or causes of action whatsoever, for injuries received or damage to property relating to the performance of duties, services and/or obligations of the CONTRACTOR under the terms and provisions of the Agreement. The CONTRACTOR is responsible for timely provision of certificate(s) of insurance to the COUNTY at the certificate holder address evidencing conformance with the Agreement requirements at all times throughout the term of the Agreement. Such policies of insurance and confirming certificates of insurance shall insure the CONTRACTOR is in accordance with the following minimum limits:

(i) General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

| | |
|---|---|
| Each Occurrence/General Aggregate | $1,000,000/2,000,000 |
| Products-Completed Operations | $2,000,000 |
| Personal & Adv. Injury | $1,000,000 |
| Fire Damage | $50,000 |
| Medical Expense | $5,000 |
| Contractual Liability | Included |

(ii) Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

| | |
|---|---|
| Combined Single Limit | $1,000,000 |

(iii) Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc). If not required by law to maintain workers compensation insurance, the vendor must provide a notarized statement that if he or she is injured, he or she will not hold the County responsible for any payment or compensation.

(iv) Employers Liability with the following minimum limits and coverage:

| | |
|---|---|
| Each Accident | $1,000,000 |
| Disease-Each Employer | $1,000,000 |
| Disease-Policy Limit | $1,000,000 |

(v) Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) insurance as applicable, with minimum limits of $1,000,000 and annual aggregate of $2,000,000.

(vi) Lake County, a Political Subdivision of the State of Florida, and the Board of County Commissioners, shall be named as additional insured as their interest may appear all applicable policies.

(vii) Certificate(s) of insurance shall provide for a minimum of thirty (30) days prior written notice to the County of any change, cancellation, or nonrenewal of the required insurance.

(viii) Certificate(s) of insurance shall identify the ITB number in the Description of Operations section of the Certificate.

(ix) Certificate of insurance shall evidence a waiver of subrogation in favor of the COUNTY, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium by the COUNTY.

(x) Certificate holder shall be:

LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND THE BOARD OF COUNTY COMMISSIONERS.
P.O. BOX 7800
TAVARES, FL 32778-7800

(xi) All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the COUNTY. At the option of the COUNTY, the insurer shall reduce or eliminate such self-insured retentions; or the CONTRACTOR shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

(xii) The COUNTY shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the CONTRACTOR and/or subcontractor providing such insurance.

(xiii) The CONTRACTOR shall be responsible for subcontractors and their insurance. Subcontractors are to provide Certificates of Insurance to the COUNTY evidencing coverage and terms in accordance with the Contractor's requirements.

(xiv) Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

(xv) Neither approval by the COUNTY of any insurance supplied by the CONTRACTOR, nor a failure to disapprove that insurance, shall relieve the CONTRACTOR of full responsibility of liability, damages, and accidents as set forth herein.

**7.4** Indemnity. CONTRACTOR shall indemnify and hold COUNTY and its agents, officers, commissioners or employees harmless for any damages resulting from failure of CONTRACTOR to take out and maintain the above insurance. Additionally, CONTRACTOR agrees for good and valuable consideration in the amount of ten dollars ($10.00) to indemnify, and hold the Board of County Commissioners, Lake County, Florida, and its officers, commissioners, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities resulting from the negligent act, error or omission of CONTRACTOR, its agents, employees or representative, in the performance of CONTRACTOR's duties set forth in this Agreement.

**7.5** Independent Contractor. CONTRACTOR, and all its employees, agree that they shall be acting as an independent contractor and shall not be considered or deemed to be an agent, employee, joint venturer, or partner of COUNTY. CONTRACTOR shall have no authority to contract for or bind COUNTY in any manner and shall not represent itself as an agent of COUNTY or as otherwise authorized to act for or on behalf of COUNTY. Additionally, CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon on resulting from the award or making of this Agreement.

**7.6** Return of Materials. Upon the request of the COUNTY, but in any event upon termination of this Agreement, CONTRACTOR shall surrender to the COUNTY all memoranda, notes, records, drawings, manuals, computer software, and other documents or materials pertaining to the services hereunder, that were furnished to the CONTRACTOR by the COUNTY pursuant to this Agreement.

**7.7** Public Entity Crimes. A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime 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 Florida Statutes, section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

**7.8** Conflict of Interest. CONTRACTOR agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement, or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government. Further, CONTRACTOR hereby certifies that no officer, agent, or employee of COUNTY has any material interest either directly or indirectly in the business of CONTRACTOR conducted here and that no such person shall have any such interest at any time during the term of this Agreement unless approved by the COUNTY.

**7.9** Retaining Other Contractors. Nothing herein shall be deemed to preclude the COUNTY from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by the CONTRACTOR or from independently developing or acquiring materials or programs that are similar to, or competitive with, the services provided under this Agreement.

**7.10** Accuracy. The CONTRACTOR is responsible for the professional quality, technical accuracy, timely completion and coordination of all the services furnished hereunder. The CONTRACTOR shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in resulting from the services provided herein.

**7.11** Additional Services. Services not specifically identified in this Agreement may be added to the Agreement upon execution of a written amendment. The COUNTY reserves the right to award any additional services to the CONTRACTOR or to acquire the items from another vendor through a separate solicitation

**7.12** Right to Audit. The County reserves the right to require CONTRACTOR to submit to an audit by any auditor of the COUNTY's choosing. CONTRACTOR shall provide access to all of its records, which relate directly or indirectly to this Agreement at its place of business during regular business hours. CONTRACTOR shall retain all records pertaining to this Agreement and upon request make them available to the COUNTY for three (3) years following expiration of the Agreement. CONTRACTOR agrees to provide such assistance as may be necessary to facilitate the review or audit by the COUNTY to ensure compliance with applicable accounting and financial standards. This provision is hereby considered to be included within, and applicable to, any subcontractor agreement entered into by the CONTRACTOR in performance of any work hereunder.

If an audit inspection or examination pursuant to this section discloses overpricing or overcharges of any nature by the CONTRACTOR to the COUNTY in excess of one percent (1%) of the total contract billings, in addition to making adjustments for the overcharges, the

reasonable actual cost of the COUNTY's audit shall be reimbursed to the COUNTY by the CONTRACTOR. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the CONTRACTOR's invoices and/or records shall be made within a reasonable amount of time, but in no event shall the time exceed ninety (90) days, from presentation of the COUNTY's audit findings to the CONTRACTOR.

**7.13** Public Records.

A. All electronic files, audio and/or video recordings, and all papers pertaining to any activity performed by the contractor for or on behalf of the COUNTY shall be the property of the COUNTY and will be turned over to the COUNTY upon request. In accordance with Chapter 119, Florida Statutes, each file and all papers pertaining to any activities performed for or on behalf of the COUNTY are public records available for inspection by any person even if the file or paper resides in the CONTRACTOR's office or facility. The CONTRACTOR shall maintain the files and papers for not less than three (3) complete calendar years after the project has been completed or terminated, or in accordance with any grant requirements, whichever is longer. Prior to the close out of the contract, the CONTRACTOR shall appoint a records custodian to handle any records request and provide the custodian's name and telephone number(s) to the Contracting Officer.

B. Any copyright derived from this Agreement shall belong to the author. The author and the CONTRACTOR shall expressly assign to the COUNTY nonexclusive, royalty free rights to use any and all information provided by the CONTRACTOR in any deliverable and/or report for the COUNTY's use which may include publishing in COUNTY documents and distribution as the COUNTY deems to be in the COUNTY's best interests. If anything included in any deliverable limits the rights of the COUNTY to use the information, the deliverable shall be considered defective and not acceptable and the CONTRACTOR will not be eligible for any compensation.

C. Pursuant to Section 119.0701, Florida Statutes, the CONTRACTOR shall comply with the Florida Public Records' laws, and shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the COUNTY in order to perform the services identified herein.

2. Provide the public with access to public records on the same terms and conditions that the COUNTY would provide the records and at a cost that does not exceed the cost provided for by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

4. Meet all requirements for retaining public records and transfer, at no cost, to the COUNTY all public records in possession of the CONTRACTOR upon termination of the contract and destroy any duplicate public records that are

exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the COUNTY in a format that is compatible with the information technology systems of the COUNTY.

Failure to comply with this subsection shall be deemed a breach of the contract and enforceable as set forth in Section 119.0701, Florida Statutes.

**7.14** Force Majeure. The parties will exercise every reasonable effort to meet their respective obligations hereunder, but shall not be liable for delays resulting from force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any Government law or regulation, acts of nature, acts or omissions of the other party, Government acts or omissions, fires, strikes, national disasters, wars, riots, transportation problems and/or any other cause whatsoever beyond the reasonable control of the parties. Any such cause will extend the performance of the delayed obligation to the extent of the delay so incurred.

**7.15** Business Hours of Operation. Unless otherwise specified in the technical specifications, all work performed shall be accomplished between the hours of 7:00 A.M. and 5:00 P.M., Monday through Friday, and no work shall be performed on Saturdays, Sundays, or County Holidays, unless permission to work has been requested in writing by the CONTRCTOR and approval, in writing, has been granted by the COUNTY. Request for permission to work must be received by the COUNTY no less than two (2) days prior to the requested workday. The exception to this pre-approval requirement would be in the case of an emergency in which the emergency specification as outlined in General Terms and Conditions, Section 3, Emergencies, would apply. County Holidays are as follows:

New Year's Day
Martin Luther King, Jr. Day
Presidents' Day
Memorial Day
Independence Day
Labor Day
Veteran's Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day

Special schedules may be established if necessary because of problems with noise or similar difficulties affecting citizens in homes or buildings/rooms adjacent to the work being completed. When the CONTRACTOR requests and is approved for Saturday, Sunday or Holiday work, the COUNTY may assess the CONTRACTOR the sum of Two Hundred Fifty Dollars ($250.00) per man per day for each Saturday, Sunday or recognized Holiday worked or planned to work. These fees will be deducted from the final invoice.

**7.16** Minimum Wage. The wage rate paid to all laborers, mechanics and apprentices employed by CONTRACTOR for the work under the Agreement shall not be less than the

prevailing wage rates for similar classifications of work as established by the federal government and enforced by the U.S. Department of Labor, Wages and Hours Division, and Florida's Minimum Wage requirements in Article X, Section 24(f) of the Florida Constitution and enforced by the Florida Legislature by statute or the State Agency for Workforce Innovation by rule, whichever is higher.

**7.17** Protection of Property. All existing structures, utilities, services, roads, trees, shrubbery and property in which the COUNTY has an interest shall be protected against damage or interrupted services at all times by the CONTRACTOR during the term of this contract, and the CONTRACTOR shall be held responsible for repairing or replacing property to the satisfaction of the COUNTY which is damaged by reason of the CONTRACTOR's operation on the property. In the event the CONTRACTOR fails to comply with these requirements, the COUNTY reserves the right to secure the required services and charge the costs of such services back to the CONTRACTOR. All items damaged as a result of CONTRACTOR or subcontractor operations belonging to third parties, such as but not limited to: sidewalks, irrigation, curbs, pipes, drains, water mains, pavement, mail boxes, turf, signs, or other property shall either be repaired or replaced by the CONTRACTOR, at the CONTRACTOR'S expense, in a manner prescribed by, and at the sole satisfaction of the COUNTY.

**7.18** Risk of Loss. CONTRACTOR assumes the risk of loss of damage to the COUNTY'S property during possession of such property by the CONTRACTOR, and until delivery to and acceptance of that property to the COUNTY. The CONTRACTOR shall immediately repair, replace or make good on the loss or damage without cost to the COUNTY, whether the loss or damage results from acts or omissions, negligent or otherwise, of the CONTRACTOR or a third party.

**7.19** Accident Notification. If in the course of completing work as part of this Agreement there is an accident that involves the public, the CONTRACTOR shall as soon as possible inform the COUNTY of the incident by telephone. The CONTRACTOR shall follow up in writing within two (2) business days of the incident. If Law Enforcement was involved and has written a report, the CONTRACTOR shall forward a copy of the report to the COUNTY.

## Article 8. Miscellaneous Provisions

**8.1** This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement shall lie in Lake County, Florida.

**8.2** Neither party may assign any rights or obligations under this Agreement to any other party unless specific written permission from the other party is obtained.

**8.3** The captions utilized in this Agreement are for the purposes of identification only and do not control or affect the meaning or construction of any of the provisions hereof.

**8.4** This Agreement shall be binding upon and shall inure to the benefit of each of the parties and of their respective successors and permitted assigns.

**8.5** This Agreement may not be amended, released, discharged, rescinded or abandoned, except by a written instrument duly executed by each of the parties hereto.

**8.6** The failure of any party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.

**8.7** During the term of this Agreement CONTRACTOR assures COUNTY that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that CONTRACTOR does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discrimination in any form or manner against CONTRACTOR employees or applicants for employment. CONTRACTOR understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance.

**8.8** CONTRACTOR shall at all times comply with all Federal, State and local laws, rules and regulations.

**8.9** The employee(s) of CONTRACTOR shall be considered at all times its employee(s) and not an employee(s) or agent(s) of COUNTY. CONTRACTOR shall provide employee(s) capable of performing the work as required. The COUNTY may require the contractor to remove any employee it deems unacceptable. All employees of the CONSULTANT shall wear proper identification.

**8.10** Any individual, corporation, or other entity that attempts to meet its contractual obligations with the COUNTY through fraud, misrepresentation or material misstatement, may be debarred for up to five (5) years. The COUNTY as a further sanction may terminate or cancel any other contracts with such individual, corporation, or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

**8.11** With the consent of CONTRACTOR, other agencies may make purchases in accordance with the contract. Any such purchases shall be governed by the same terms and conditions as stated herein with the exception of the change in agency name. In addition, although this solicitation is specific to a County Department, it is agreed and understood that any County department may avail itself of this contract and purchase any and all items specified herein at the contract price(s) established herein. A contract modification shall be issued by the County identifying the requirements of the additional County department(s).

**8.12** CONTRACTOR shall act as the prime contractor for all required items and services and shall assume full responsibility for the procurement and maintenance of such items and services. CONTRACTOR shall be considered the sole point of contact with regards to all stipulations,

including payment of all charges and meeting all requirements of this Agreement. All subcontractors will be subject to advance review by the COUNTY in terms of competency and security concerns. No change in subcontractors shall be made without consent of the COUNTY. CONTRACTOR shall be responsible for all insurance, permits, licenses and related matters for any and all subcontractors. Even if the subcontractor is self-insured, the COUNTY may require the CONTRACTOR to provide any insurance certificates required by the work to be performed.

**8.13** The CONTRACTOR shall either be registered or have applied for registration with the Florida Department of State in accordance with the provisions of Chapter 607, Florida Statutes.

**8.14** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

**8.15** Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States registered or certified mail or sent by facsimile, addressed as follows:

| If to CONTRACTOR: | If to COUNTY: |
|---|---|
| James Svenson, President<br>1715 Hermit Smith Road<br>Apopka, Florida 32712 | County Manager<br>County Administration Building<br>315 West Main Street, Suite 308<br>Post Office Box 7800<br>Tavares, Florida 32778-7800 |

Each party hereto may change its mailing address by giving to the other party hereto, by hand delivery, United States registered or certified mail notice of election to change such address.

## Article 9. Scope of Agreement

**9.1** This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made. Any items not covered under this contract will need to be added via written addendum, and pricing negotiated based on final specifications.

**9.2** This Agreement contains the following Exhibits, all of which are incorporated herein:

| | |
|---|---|
| Exhibit A | Scope of Services |
| Exhibit B | Contractor's Adjustment Factor |
| Exhibit C | Sample Cost Estimate |

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the respective dates under each signature: COUNTY through its Board of County Commissioners, signing by and through its Chair, authorized to execute same by Board Action on the 15th day of ~~August~~ September, 2015, and by CONTRACTOR through its duly authorized representative.

**CONTRACTOR**
Svenson Construction, Inc.

James Svenson, President
License # CGC1250553

**COUNTY**

ATTEST:

Neil Kelly, Clerk of the
Board of County Commissioners
of Lake County, Florida

Jimmy Conner
Chairman
This 15th day of September, 2015.

Approved as to form and legality:

Sanford A. Minkoff
County Attorney

# EXHIBIT A: SCOPE OF SERVICES

## RSMeans On-Call Contractor Scope of Services

### 1. GENERAL

Perform all work in accordance with all applicable Federal, State and local laws, rules and regulations and requirements of Lake County.

**The Contractor shall provide all required labor, material, permits, plans, engineering, local and state inspections to provide a 100% completed project.**

### 2. PURPOSE

The purpose of this solicitation is to select qualified Contractor(s), Building and/or General that will be utilized to execute construction and/or repair work for Lake County on projects that shall not exceed $50,000.

### 3. DESCRIPTION OF WORK

The Contractor(s) shall provide construction and repair services, on an as needed basis, to the County on projects not exceeding $50,000.00. Costs for the work shall be determined using the most current RSMeans cost data as derived from the following RSMeans books:

- RSMeans Building and Construction Cost Data
- RSMeans Commercial Renovation Cost Data
- RSMeans Mechanical Cost Data
- RSMeans Plumbing Cost Data
- RSMeans Electrical Cost Data
- RSMeans Facilities Maintenance and Repair Cost Data

Individual projects shall be assigned to the Contractor in accordance with the Project Ordering System described in **Section 14.**

### 4. DEFINITIONS

**Calendar Day** – Every day shown on the calendar, ending and beginning at Midnight.

**Change Order** – A written order issued by the County's Project Manager in accordance with Board policy, and accepted by the Contractor directing certain changes, additions or reductions in the work or in the materials used.

**Contractor Factor** - Percentage factor used to adjust location modified, through Location Factor, cost estimate to the final Contractor's bid price. The Contractor Factor is established by the Contractor at the time of bid submission and shall be used to determine the low bidder. **The Contractor Factor shall include all areas covered by Division 1 (except items specifically listed in the Division 1 definition) of the specified RS Means Cost book(s).** It shall be effective for the contract period and may not be adjusted upon exercise of renewal options due to the issuance of later editions to the RS Means Cost books.

The Contractor shall provide two (2) Contractor Factors as their bid. The first Contractor factor shall be used for work performed during normal County business hours. The second Contractor Factor shall be used for work performed after normal County business hours. The after normal County business hours Contractor factor shall only be used when the Contractor is required to work after normal County business hours by Lake County. This factor shall not be used if the Contractor chooses to work after normal County business hours. The factors will be determined and agreed upon prior to the start of the project and will be clearly indicated on the cost estimate sheet. (See Sample Cost Estimate and Directions) Individual line items will be subtotaled for normal County business hours and for after normal County business hours, multiplied by the location factor to determine a regional subtotal. The

regional subtotal will be multiplied by the appropriate Contractor Factor for normal County business hours and/or after normal County business hours to determine the Contractor Factor Subtotal. The Grand Total for the project shall be derived by adding the Contractor Factor Subtotal for normal County business hours to the Contractor Factor Subtotal for after normal County business hours.

**Cost Estimate** – Written cost estimate based upon unit cost prices from the current issue of the R. S. Means Data Books developed by the County's Project Manager after all necessary specifications, drawings, photographs, and/or special requirements pertaining to the work have been reviewed and considered. Cost Estimates shall be adjusted by Location Factor and the Contractor Factor before being considered complete and provided to the Contractor. **Note: Items listed in Division 1 (except items specifically listed in the Division 1 definition) of the specified RS Means Cost book shall be included in the Contractor Factor and shall not be included in the cost estimate.**

**Division 1** – Division 1 is the first cost section contained in RSMeans books. All items in Division 1 shall be included in the Contractor Factor with the exception of the following:

- **011131.10 Architectural Fees** - Actual cost for the Architectural Fees will be paid based on proof of cost from third party vendor invoice. These costs will be pass through third party vendor costs only with no added costs for Contractor efforts. The Contractor's efforts (delivery, pickup, equipment, mobilization, testing, profit, overhead, copying, etc.) will be covered by their Contractor Factor.
- **011131.30 Engineering Fees** - Actual cost for the Engineering Fees will be paid based on proof of cost from third party vendor invoice. These costs will be pass through third party vendor costs only with no added costs for Contractor efforts. The Contractor's efforts (delivery, pickup, equipment, mobilization, testing, profit, overhead, copying, etc.) will be covered by their Contractor Factor.
- **014126.50 Permits** - Actual cost for the Permit Fees will be paid based on proof of cost from third party vendor invoice. These costs will be pass through third party vendor costs only with no added costs for Contractor efforts. The Contractor's efforts (delivery, pickup, equipment, mobilization, testing, profit, overhead, copying, etc.) will be covered by their Contractor Factor.
- **015436.50 Mobilization**
- **015616.10 Temporary Dust Barriers**
- **015813.50 Signs** - Actual cost for the materials will be paid based on proof of cost from third party vendor invoice. These costs will be pass through third party vendor costs only with no added costs for Contractor efforts. The Contractor's efforts (delivery, pickup, equipment, mobilization, testing, profit, overhead, copying, etc.) will be covered by their Contractor Factor.

**Location Factor** – Percentage factor based upon zip code used to adjust base cost from a national average to a specific location. This factor is NOT the City Cost Indexes which is an alternate method for regionalizing costs. Location factor should be applied after base estimate is established but before the Contractor Factor. Factors shall be effective for the contract period and may not be adjusted upon exercise of renewal options due to the issuance of later editions to the RS Means Cost books.

**Plans** – The approved drawings or reproductions that show the location, character, dimension and details of the work to be done as issued by the County's Project Manager. These plans are meant to be for illustrative purposes only.

**Project Manager** - Agent of the County responsible for items including but not limited to establishment of cost estimate, accepting/rejecting of work product, administration of the contract on a per job basis, as well as interfacing with the Contractor.

**Scope of Work** – The general intent of the work to be accomplished as defined by the project plans, drawings, photographs, and/or specifications.

## 5. ACCURACY

The Contractor is responsible for the professional quality, technical accuracy, timely completion and coordination of all the services furnished hereunder. The Contractor shall, without additional compensation, correct or revise any errors, omissions or other deficiencies resulting from the services provided.

## 6. METHOD OF PAYMENT

Payment shall be based upon the multipliers set forth in the Pricing Section. The multipliers shall remain firm during the term of this Agreement unless the Contractor agrees to or offers lower multipliers. Neither progress payment nor partial or entire use or occupancy of the project by the County shall constitute an acceptance of work not in accordance with the contract documents.

**Projects twenty five thousand dollars ($25,000) and under:** The County shall provide a lump sum payment when all project tasks are completed by the Contractor and approved by the County's Project Manager. In order for the County to provide payment, the vendor shall submit a fully documented invoice that provides the basic information set forth below. The Contractor shall submit their invoice to the Facilities and Fleet Management Department, 32400 C.R. 473 Leesburg, FL 34788, after all work has been completed. Invoices shall be hand delivered or mailed. Faxes &/or emails will not be accepted for invoicing.

**Projects greater than twenty five thousand dollars ($25,000):** The Contractor may receive periodic payments on a thirty (30) day interval for project tasks completed during that period by the Contractor and approved by the County's Project Manager. Retention of funds shall be held in accordance with Florida Prompt Payment Act. In order for the County to provide payment, the vendor shall submit a fully documented invoice that provides the basic information set forth below. The Contractor shall submit their invoice to the Facilities and Fleet Management Department, 32400 C.R. 473 Leesburg, FL 34788, after all work has been completed. Invoices shall be hand delivered or mailed. Faxes &/or emails will not be accepted for invoicing.

All invoices shall contain the contract and/or purchase order number, date and location of delivery or service, and confirmation of acceptance of the goods or services by the County's Project Manager. The Contractor shall also submit with their invoice a completed "Certification of Payment to Subcontractors and Suppliers" form. Failure to submit invoices and certification form in the prescribed manner will delay payment, and the Contractor may be considered in default of contract. Payments shall be tendered in accordance with the Florida Prompt Payment Act, Part VII, Chapter 218, Florida Statutes.

If any project given to the Contractor under this agreement is one is which federal or state funds shall be used, the contractor is hereby informed that payment shall be contingent upon receipt of said federal or state funds or approval. Additionally, payment shall be contingent upon the Contractor completing all required forms and documentation as is necessary in order to obtain such federal or state funding or approval as well as, approval from the County's Project Manager.

## 7. PROJECT TIME

The Contractor acknowledges that time is of the essence in carrying out Contractor responsibilities. Project time shall be listed on the Cost Estimate. If no project time is listed the following shall apply:

- For projects $25,000 and under, the Contractor shall have sixty (60) calendar days to complete the work from the date of receipt of the "Notice to Proceed".

- For projects greater than $25,000, the Contractor shall have ninety (90) calendar days to complete the work from the date of receipt of the "Notice to Proceed".
- If the Contractor fails to have the project completed by the specified time, the County may, at its discretion, either apply liquidated damages or hire another company to complete the work as needed. Any additional cost incurred by the County because of the Contractor's failure to complete the project as assigned shall be deducted from the Contractor's final invoice.

## 8. QUANTITIES

Contractor agrees that this shall be an open quantity contract. The County shall not guarantee to the Contractor any minimum amount of work throughout the term of this Agreement. Furthermore, Contractor agrees and acknowledges that in the event Contractor cannot meet the County's specifications, including but not limited to, time for completion, cost for individual project etc... that the County reserves the sole right to offer the individual project to other contractors retained by the County.

## 9. PROJECT ORDER SYSTEM

This section describes the chronological order of events that will take place to begin, carry out and complete a project under this contract.

1. The County's Project Manager will prepare all necessary specifications, drawings, photographs, and/or special requirements to adequately portray the scope of work. Unless specifically stated plans/drawings shall be for illustrative purposes only. The Contractor shall be required to provide plans and engineering if required. Upon completion of gathering necessary scope documents, the County's Project Manager shall prepare a Cost Estimate, based upon unit cost prices from the current issue of the specified R. S. Means Cost Data Book modified for location and the Contractor's Bid Factor for submittal and review by the Contractor.

2. The Contractor shall contact the County's Project Manager to arrange for a site visit. Site visit shall be made within three (3) days of receipt of cost estimate.

3. **Projects twenty five thousand dollars ($25,000) and under**: The Contractor shall provide an acceptance or revision email to the County's Project Manager within three (3) business days following the site visit. The Contractor's acceptance or rejection of the cost estimate shall be limited to specific line item inclusion or exclusion and specific quantities of the line items provided in the estimate. All unit prices are fixed and non-negotiable by the specified R. S. Means Cost Data Book, Location Factor, and the Contractor Bid Factor. If subcontractors are to be used by the Contractor, the Contractor shall provide a listing of such subcontractors with their response.

4. **Projects greater than twenty five thousand dollars ($25,000):** The Contractor shall provide an acceptance or revision to the County's Project Manager within ten (10) business days following the site visit. The Contractor's acceptance or rejection of the cost estimate shall be limited to specific line item inclusion or exclusion and specific quantities of the line items provided in the estimate. All unit prices are fixed and non-negotiable by the specified R. S. Means Cost Data Book, Location Factor, and the Contractor Factor. If subcontractors are to be used by the Contractor, the Contractor shall provide a listing of such subcontractors with their response.

5. In the event the Contractor provides rejection of the Cost Estimate, the Contractor shall provide specific reason(s) for the rejection of the estimate. Approved reasons for rejection are limited to the following:

- Error in specific unit quantity(s)
- Incorrect line item(s) provided in cost estimate
- Missing line item(s) in cost estimate
- Incorrect Location Factor
- Incorrect Contractor Factor
- Mathematical error(s)

The Contractor must demonstrate to the satisfaction of the County's Project Manager reason(s) for rejection. Upon agreement by both parties of such an error, the County's Project Manager shall reissue a new cost estimate and it shall be reviewed as described in the method above. In the event the Contractor is unwilling to accept an estimate and does not have an approved rejection, the Contractor shall be provided a Notice of Unapproved Cost Estimate Rejection in writing.

The Contractor shall, upon request, meet with the County's Project Manager to review the submittal and shall at the request of the County's Project Manager, enter into an agreed price in accordance with the terms of the agreement.

The RS Means Cost Data Books are believed to be extremely comprehensive in nature. The vast amount of minor differences in the construction industry makes it impossible for one publication to address every combination of materials. As a result of these many materials available, the County's Project Manager shall seek the most appropriate line item in the event there is not a direct match. In such a case, the County's Project Manager shall choose the most applicable. The Contractor shall not be bound by this substitute line item and this may be basis for an Approved Rejection of the Cost Estimate. In the event that neither party can agree on an accurate substitute, that specific item shall be excluded from the project if possible. If this is not a possible option, the Contractor shall be granted an Approved Rejection of the Cost Estimate and the County's Project Manager shall look to the 2nd RSMeans Contractor or shall seek an alternate bidding method outside of this contract.

6. Upon acceptance of the cost estimate the Contractor shall email the County's Project Manager stating that the cost estimate is approved and all work shall be performed in accordance with the scope of work documents. No change orders, modification of quantities, or addition of line items will be provided after signed acceptance is provided for the performance of work under the original scope. Change orders will be provided only for the addition or deletion of work differing from the original scope of work documents.

7. Upon receiving approval from the Contractor of the Cost Estimate the County's Project Manager shall submit to the office of Procurement Services to issue a Purchase Order for the project. Once received the County's Project Manager shall provide the purchase order to the Contractor and shall also give the Contractor official Notice to Proceed by email. The Contractor shall provide verification email within 24 hours of receipt. Notice to Proceed may or may not be given at the same time as the purchase order based on scheduling with other County Departments. The Contractor shall complete the work within the time frame specified in **Section 8** after the issuance of the Notice to Proceed.

8. Upon notice from the Contractor that the service has been completed (or upon receipt of an invoice), the Project Manager will make a final inspection within five (5) business days of receipt of notification. The Project Manager shall notify the Contractor verbally or in writing if necessary of any deficiencies, if any, with the project. The Contractor shall correct all

deficiencies before final acceptance and payment is made. If the deficiencies have not been completed within the contract time, the Project Manager shall send out a second notification notifying Contractor of assessment of liquidated damages.

9. Upon completion of the deficiencies, the Contractor shall notify the Project Manager when the deficiencies has been completed and corrected. If the deficiencies are not corrected when inspected, an eighty (80.00) dollar inspection fee shall be assessed to the Contractor for the second inspection and any re-inspection that may be required after that. The fee is assessed to offset the additional costs associated with County labor and vehicle usage required for unnecessary inspections. The fee(s) shall be deducted from the final invoice for that release order.

## 14. ADDITIONAL SERVICES

Services not specifically identified in this Agreement may be added to the Agreement upon execution of a written modification.

## 15. COUNTY SUPPLIED MATERIALS

If materials are supplied by the County for a particular project, the cost of the material shown in the material column of the specific line item shall be subtracted from the Total Including O&P column. The difference of these two items shall be the modified unit cost before application of Location Factor and Contractor Factor.

The County shall deliver material(s) to the designated location provided by the Contractor. A delivery request by Contractor shall occur at least two (2) business days prior to actual delivery date needed.

## 16. GENERAL CONDITIONS

**Measurement and Payment**

All work completed under the terms of this contract shall be measured according to United States Standard Measures.

All measurements shall be taken horizontally or vertically, unless specifically provided otherwise.

In the measurement of items to be paid for on the basis of area of finished work, when the pay quantity is designated to be determined by calculation, the lengths and/or widths to be used in the calculations shall be the center line to center line shown on the plans, or the final dimensions measured of the completed work within the lines shown on the plans or designated by the Project Manager. The method, or combination of methods, shall be those which reflect with reasonable accuracy the actual area of finished work as determined and authorized by the Project Manager.

No payment will be made for either construction over a greater area than authorized, or for material moved from outside of the boundary shown on the plans, except when such work is performed upon instructions of the Project Manager, with the County's approval.

No payment will be made on materials that are stored either on-site or off-site unless approved in advance by the County. Invoices shall only request payment for those materials that have been incorporated into the work. Determination as to whether the materials have been stored or incorporated into the work shall be solely the County's decision.

The Contractor shall accept compensation provided under the terms of this contract as full payment for furnishing all materials and for performing all work contemplated and embraced under this contract.

Such compensation shall also be for any and all loss or damage arising out of the nature of the work or from the action of the elements, or from any unforeseen difficulties or obstructions encountered during the contract period until final acceptance by the County.

Failure to construct any item to plan or authorized dimensions within the specification tolerances shall result in reconstruction by the Contractor to acceptable tolerances at no additional cost to the County, acceptance at no pay, or acceptance at reduced final pay as determined by the Project Manager.

**Termination of Contractor's Responsibilities**
The contract will be considered complete when all work has been completed and has been accepted by the County and the Project Manager. The Contractor will then be released from further obligation except as set forth in the bonds and in this Contract.

**Recovery Rights Subsequent to Final Payment**
The County reserves the right, should an error be discovered in the partial or final estimates, or should proof of defective work or materials used by or on the part of the Contractor be discovered after the final payment has been made, to claim and recover from the Contractor or its surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the work and materials, including any fees or costs associated with the additional services of the Project Manager.

**Lands For Work and Access Thereto**
The County will furnish and define the limits of land for access to the construction site and for the site proper. All information shown in the contract documents constitutes the extent of land provided by the County. No storage or service of equipment shall take place on private property unless the Contractor has a letter from the landowner stating that the Contractor has permission to do so. The Contractor shall supply the Project Manager with a copy of any such letter before the equipment is placed there. Any and all other lands required by the Contractor shall be procured by the Contractor at the Contractor's expense.

As the work progresses, the Contractor shall keep the site reasonably clear of rubbish, trash, waste and other disposable materials on a daily basis. If the Contractor allows the site to become littered and unsightly, any payments otherwise due may be withheld until the Contractor cleans up the site to the satisfaction of the County. If the Contractor fails to clean up the site, the County may choose to clean up the site at the Contractor's expense.

The Contractor shall confine 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 shall not unreasonably encumber the project site, as determined by the Project Manager or the County, with construction equipment or materials. The 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. At the completion of the work, the 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 surface materials and shall leave the project site clean and ready for occupancy by the County.

**Equipment**
All equipment may be inspected and approved by the Project Manager before it is placed in service. If at any time, the Project Manager determines that any equipment is deficient in any way, the Contractor shall remove the equipment from service immediately, and the equipment shall remain out of service until the deficiency is corrected to the satisfaction of the Project Manager. Inspection and approval of the Contractors equipment by the Project Manager shall not relieve the Contractor of responsibility or

liability for injury to persons or damage to property caused by the operation of the Contractors equipment, nor shall it relieve the Contractor of the responsibility to meet the established time for the completion of the service.

Any equipment left within the right of way shall be outside the clear zone. No equipment shall be parked overnight in the median.

All service and supply operations shall be conducted outside the clear zone. No supply vehicles shall enter the median for any purpose. No service vehicles shall enter the median except when necessary to repair or remove inoperable equipment.

**Storage of Materials**
Materials shall be so placed so as to permit easy access for proper inspection and identification of each shipment. Any material which has deteriorated, become damaged, or is otherwise unfit for use, as determined by the Project Manager, shall not be used in the work, and shall be removed from the site by the Contractor at the Contractor's expense.

**Other Work**
The Contractor will cooperate with County forces or others who may be engaged in authorized work prior to final completion of the project.

The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner and that service rendered by these parties will not be interrupted.

The County may perform other work related to the project site or, in the general vicinity of the site by the County's own forces, have other work performed by utility owners or let other direct contracts. If other work is not identified in the contract documents and if the Contractor believes that such performance will involve additional expense to the Contractor or require additional time, the Contractor shall send written notice of that fact to the County and the Project Manager within two (2) business days of being notified of the other work. If the Contractor fails to send the above required 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. The Contractor shall afford each utility owner and other contractors (or the County, if the County is performing the additional work with the County'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. The 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.

If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor other than a subcontractor or utility owner, the Contractor shall inspect and promptly report to the Project Manager, in writing within two (2) business days, any delays, defect or other problems in such other work that renders it impossible for the Contractor to obtain proper execution or results. The Contractor's failure to report will constitute an acceptance of the other work as fit and property for integration with the Contractor's work.

## EXHIBIT B: CONTRACTOR'S ADJUSTMENT FACTOR

CONTRACTOR'S ADJUSTMENT FACTOR # 1, Work performed during normal County business hours (see Addendum # 1 and definitions section of the Statement of Work and note 8 of Pricing Directions at Attachment 2): $ 0.92

CONTRACTOR'S ADJUSTMENT FACTOR # 2, Work performed after normal County business hours (see Addendum # 1 and definitions section of the Statement of Work and note 8 of Pricing Directions at Attachment 2): $ 0.95

Florida Contractor's License/Certification No. CBC1250553 Expiration Date: AUG 2016

# EXHIBIT C: SAMPLE FORM

## SAMPLE COST ESTIMATE

**INTERIOR RENOVATION TO LAKE COUNTY PUBLIC DEFENDER'S OFFICE**

**CONTRACTOR INFORMATION:**
ACME Construction
1992 CR 470
Leesburg, FL 34778
352-555-1993

**CONTRACT NO.:** 01-0205
**PROPOSAL DATE:** 12/12/12
**RS MEANS BOOK:** Building Construction Cost Data
**PROJECT TIME:** 30 Days

Note #1 | Note #2 | Note #3 | Note #4

| RS MEANS CODE | DESCRIPTION | QUANTITY | UNIT | UNIT COST | TOTAL |
|---|---|---|---|---|---|
| | **Normal County Business Hours** | | | | |
| 06 11 10.26 0205 | 2" x 4" x 8' stud walls installed | 71.5 | LF | $12.30 | $879.45 |
| 26 05 19.20 9050 | Install MC cable for electrical circuits for new receptacles and lights | 3 | CLF | $450.00 | $1,350.00 |
| 26 05 90.10 4120 | Install 12 - 20 amp duplex receptacles | 12 | Ea. | $100.00 | $1,200.00 |
| 27 05 90.10 3370 | Install 3 single pole switches for lights | 3 | Ea. | $121.00 | $363.00 |
| 27 51 13.50 3530 | Install 3 - 1' x 4' 32 watt T8 troffer lights | 3 | Ea. | $263.00 | $789.00 |
| 07 21 16.20 0020 | Kraft faced fiberglass insulation installed in new stud walls | 571 | SF | $0.69 | $393.99 |
| 23 33 46.10 1940 | Install 6 flexible air ducts for supply and return air | 100 | LF | $7.15 | $715.00 |
| 23 37 13.10 1120 | Install 6 - 12" x 12" registers for air supply and return | 6 | Ea. | $106.00 | $636.00 |
| 09 29 10.30 2000 | 5/8" drywall installed on walls - taped and finished with light orange peel | 1120 | SF | $1.46 | $1,635.20 |
| 09 51 23.10 0700 | Install suspended grid ceiling system | 300 | SF | $3.90 | $1,170.00 |
| 08 12 13.13 0025 | Install 3 - 3'0" x 6'8" 16 ga. metal door frames | 3 | Ea. | $225.00 | $675.00 |
| 08 14 13.10 2140 | Install 3 - 3'0" x 6'8" solid core birch face doors | 3 | Ea. | $199.00 | $597.00 |
| 08 71 20.42 0100 | Install 3 commercial keyed locksets | 3 | Ea. | $320.00 | $960.00 |
| | | Note #6 | **SUBTOTAL** | | $11,363.64 |
| | | Note #7 | **LOCATION FACTOR** | | 0.891 |
| | | | **REGIONAL SUBTOTAL** | | $10,125.00 |
| | | Note #8 | **CONTRACTOR FACTOR** | | $0.95 |
| | | Note #9 | **CONTRACTOR FACTOR SUBTOTAL** | | $9,618.75 |
| | **After Normal County Business Hours** | | | | |
| 09 91 23.72 0240 | Prime and paint new drywall | 1120 | SF | $0.41 | $459.20 |
| 09 91 23.33 1800 | Stain new wood doors to match existing | 3 | Ea. | $67.50 | $202.50 |
| | | Note #6 | **SUBTOTAL** | | $661.70 |
| | | Note #7 | **LOCATION FACTOR** | | 0.891 |
| | | | **REGIONAL SUBTOTAL** | | $589.57 |
| | | Note #8 | **CONTRACTOR FACTOR** | | $1.10 |
| | | Note #9 | **CONTRACTOR FACTOR SUBTOTAL** | | $648.53 |
| | | Note #10 | **GRAND TOTAL** | | **$10,267.28** |

Note #5
**SPECIAL NOTES:** Work will be performed during and after normal County business hours

Contractor's Acceptance Signature: Note #11

***Note #1:*** Descriptive information regarding individual units is provided by the *RS Means Code* column as well as the *Description column. RS Means Code* column is the unique number for each line item in the RS Means Book. The *Description* column provides a written narrative of each code.

***Note #2:*** The *Quantity* Column provides the specific number of units estimated for each line item for the job.

***Note #3:*** Fixed national cost averages are provided in the *Unit Cost* column for each line item. Each unit cost can be found in the Total Including O&P column for each RS means Code in the book.

***Note #4:*** The *Total* column is a calculated column that multiples (*Quantity* X *Unit Cost*).

***Note #5:*** Various additional job specific requirements are provided in the *Special Notes* section of the estimate.

***Note #6:*** A total of all the individual items are provided in the *Subtotal* cell. This creates a total for the job prior to applying a local cost modifier, *Location Factor*.

***Note #7:*** The *Location Factor* creates a specific cost for this area of the country. This number is provided through the RS Means book for specific zip codes. The *Regional Subtotal* is calculated by: (*Subtotal* X *Location Factor*).

***Note #8:*** The *Contractor Factor* is the number provided as the Contractors bid. This number modifies the *Regional Subtotal* by creating a Contractor specific bid.

***Note #9:*** *The Contractor Factor Subtotal* is calculated by: (*Regional Subtotal* X *Contractor Factor*).

***Note 10:*** A *Grand Total* for the job is calculated by: (Contractor *Factor Subtotal for normal County business hours added to the Contractor Factor Subtotal for after normal County business hours*).

***Note #11:*** The *Contractor Acceptance Signature* is the area where the contractor signs in his or her agreement with the cost estimate. This acceptance allows for the County Purchase Order process to begin.