

**CONSTRUCTION SERVICES AGREEMENT FOR DRAINAGE WELL INSTALLATION PROJECT**

THIS CONSTRUCTION SERVICES AGREEMENT FOR DRAINAGE WELL INSTALLATION PROJECT ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City"), and **EARL'S WELL DRILLING & PUMP SERVICE, INC.**, a for profit corporation duly organized and authorized to do business in the State of Florida (EIN: 59-3162032) ("Contractor").

**R E C I T A L S :**

**WHEREAS**, on June 29, 2020, the City of Ocala and the State of Florida Department of Environmental Protection (FDEP) entered into Standard Grant Agreement NS052 ("Grant") for the funding of construction activities related to the abandonment of one recharge well and installation of a Nutrient Removing Filtration System using Bold & Gold Media at Lake Tusawilla; and

**WHEREAS**, on November 1, 2021, City issued an Invitation to Bid ("ITB") for the drilling and installation of one (1) functional drainage well, ITB No.: CIP/210984 (the "Solicitation"); and

**WHEREAS**, one (1) firm responded to the Solicitation and, after consideration of price and other evaluation factors set forth in the Solicitation, the bid submitted by Contractor was found to be the lowest; and

**WHEREAS**, Earl's Well Drilling & Pump Service, Inc. was chosen as the intended awardee to provide construction services for the installation of one (1) functional drainage well (the "Project"); and

**WHEREAS**, Contractor certifies that Contractor is qualified and possesses the required licensure and skill to perform the work required for the Project; and

**NOW THEREFORE**, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Contractor agree as follows:

**T E R M S   O F   A G R E E M E N T :**

1. **RECITALS.** City and Contractor hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The Contract Documents which comprise the entire understanding between City and Contractor shall only include: (a) this Agreement; (b) those documents listed in this section as Exhibits to this Agreement; (c) the City's Solicitation for the Project and the bid submitted by Contractor in response to same (the "Solicitation Documents"); and (d) those documents identified in the Project Specifications section of this Agreement. Each of these documents are incorporated herein by reference for all purposes.

If there is a conflict between the terms of this Agreement and the Contract Documents, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.

A. **Exhibits to Agreement:** The Exhibits to this Agreement are as follows:

- Exhibit A: Scope of Work (A-1 through A-4)
- Exhibit B: Location Map (B-1)
- Exhibit C: Permit (C-1 through C-2)
- Exhibit D: Grant Clauses (D-1 through D-8)
- Exhibit E: Drainage Well Structure Details (dated 11/1/2021) is available for inspection and copying at 1805 NE 30<sup>th</sup> Avenue, Building 700, Ocala, Florida.

If there is a conflict between the individual Exhibits regarding the scope of work to be performed, then any identified inconsistency shall be resolved by giving precedence in the following order: (1) Exhibit D, then (2) Exhibit A, then (3) Exhibit E, then (4) Exhibit C, then (5) Exhibit B.

B. **Project Specifications:** This project will require the Contractor to have the following specifications and documents, which are incorporated by reference:

**City of Ocala "Standard Specifications for Construction of Streets, Stormwater, Traffic, Water and Sewer Infrastructure"** available at:

<https://bidocala.com/wp-content/uploads/City-of-Ocala-Standard-Specifications-for-Construction-8.02.21.pdf>.

3. **SCOPE OF SERVICES.** Contractor shall provide all materials, labor, supervision, tools, accessories, equipment, permits, fees, testing, inspections, certifications, and all other things necessary for Contractor to perform its obligations under this Agreement as set forth in the attached **Exhibit A - Scope of Work** and the Solicitation Documents. The Scope of Work under this Agreement may only be adjusted by written amendment executed by both parties.
4. **COMPENSATION.** City shall pay Contractor a lump sum amount of **TWENTY-TWO THOUSAND, SEVENTY-THREE AND NO/100 DOLLARS (\$22,073)** (the "Contract Sum") as full and complete compensation for the timely and satisfactory completion of the work in compliance with the Contract Documents. The pricing under this Agreement may only be adjusted by written amendment executed by both parties.
  - A. **Monthly Progress Payments:** The compensation amount under this section shall be paid by City, monthly, based upon a percentage of completion of the work as invoiced by Contractor and approved by City. The compensation sought under this Agreement is

subject to the express terms of this Agreement and any applicable federal and/or state laws.

- B. **Project Schedule and Progress Reports.** A progress report and updated project schedule must be submitted with each monthly pay request indicating the percent of services completed to date. This report will serve as support for payment to Contractor and the basis for payment in the event project is suspended or abandoned.
- C. **Invoice Submission.** All invoices submitted by Contractor shall include the City Contract Number, an assigned Invoice Number, and an Invoice Date. Contractor shall be provided with a cover sheet for invoicing. This cover sheet must be filled out correctly and submitted with each invoice. Contractor shall submit the original invoice through the responsible City Project Manager at: **City of Ocala Engineer's Office, Attn: Brian Hutchinson, 1805 NE 30<sup>th</sup> Avenue, Building 700, Ocala, Florida 34471**, E-Mail: [whutchinson@ocalafl.org](mailto:whutchinson@ocalafl.org).
- D. **Payment of Invoices by City.** The City Project Manager must review and approve all invoices prior to payment. City Project Manager's approval shall not be unreasonably withheld, conditioned, or delayed. Payments by City shall be made no later than the time periods established in section 218.735, Florida Statutes.
- E. **Retainage.** City shall withhold an amount equal to **FIVE PERCENT (5%)** of each monthly progress payment as retainage to secure Contractor's full and faithful performance of its obligations under this Agreement (the "Retainage"). Contractor shall not be entitled to any interest received by City on Retainage. The Retainage shall be payable to Contractor, subject to the provisions of this subsection, upon satisfaction of the following conditions precedent: (1) confirmation from the City Project Manager that Contractor has satisfactorily completed all work in accordance with the provisions of the Agreement; and (2) receipt of the Consent of Surety of the recorded bond for final payment.
- F. **Withholding of Payment.** City reserves the right to withhold, in whole or in part, payment for any and all work that: (i) has not been completed by Contractor; (ii) is inadequate or defective and has not been remedied or resolved in a manner satisfactory to the City Project Manager; or (iii) which fails to comply with any term, condition, or other requirement under this Agreement. Any payment withheld shall be released and remitted to Contractor within **THIRTY (30)** calendar days of the Contractor's remedy or resolution of the inadequacy or defect.
- G. **Excess Funds.** If due to mistake or any other reason Contractor receives payment under this Agreement in excess of what is provided for by the Agreement, Contractor shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment

shall be refunded to City within **THIRTY (30)** days of Contractor's receipt of the overpayment or must also include interest calculated from the date of the overpayment at the interest rate for judgments at the highest rate as allowed by law.

H. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Contractor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Contractor be authorized to use City's Tax Exemption Number for securing materials listed herein.

5. **TIME FOR PERFORMANCE.** Time is of the essence with respect to the performance of all duties, obligations, and responsibilities set forth in this Agreement and the Contract Documents.

A. Contractor shall mobilize and commence work no later than **TEN (10)** working days from the date of issuance of a Notice to Proceed for the project by City. At no time will the Contractor be allowed to lag behind.

B. **All work shall be completed by Contractor in a manner satisfactory to the City Project Manager and ready for final payment within FIFTEEN (15) days of the start date indicated on the Notice to Proceed.**

C. The Time for Performance under this Agreement may only be adjusted by Change Order, in the sole and absolute discretion of City. Any request for an extension of the Time for Performance must be submitted in a writing delivered to the City Project Manager, along with all supporting data, within **SEVEN (7)** calendar days of the occurrence of the event giving rise to the need for adjustment unless the City allows an additional period of time to ascertain more accurate data. All requests for adjustments in the Contract Time shall be determined by City.

D. As to any delay, inefficiency, or interference in this performance of this Agreement caused by any act or failure to act by City, the Contractor's sole remedy shall be the entitlement of an extension of time to complete the performance of the affected work in accordance with the Contract Documents. Contractor agrees to make no claim for extra or additional costs attributable to said delays, inefficiencies or interference, except as provided in this Agreement.

E. None of the provisions of this section shall exclude City's right of recovery for damages caused by delays or inefficiencies caused by any act or failure to act by Contractor, to include costs incurred by City for the procurement of additional professional services.

6. **LIQUIDATED DAMAGES FOR LATE COMPLETION.** The parties agree that it would be extremely difficult and impracticable under the presently known facts and anticipated circumstances to ascertain and fix the actual damages that City and its residents would incur should Contractor fail to achieve Final Completion and readiness for final payment by the dates specified for each under the terms of this Agreement. Accordingly, the parties agree that should Contractor fail to achieve Final Completion by the date specified, then Contractor shall pay City, as liquidated damages and not as a penalty, the sum of **ONE HUNDRED AND NO/100 DOLLARS (\$100)** per day for each calendar day of unexcused delay in achieving Final Completion beyond the date specified for Final Completion in the Contract Documents.
- A. **No Waiver of Rights or Liabilities.** Permitting Contractor to continue and finish the work, or any part thereof, beyond the dates specified for Final Completion and readiness for final payment shall not operate as a waiver on the part of the City of any of its rights under this Agreement. Any liquidated damages assessed pursuant to this section shall not relieve Contractor from liability for any damages or costs of other contractors caused by a failure of Contractor to complete the work as agreed.
  - B. **Right to Withhold or Deduct Damages.** When liquidated damages are due and owing, City shall have the right to: (1) deduct the liquidated damages from any money in its hands or from any money otherwise due or to become due to Contractor; or to (2) initiate any applicable dispute resolution procedure for the recovery of liquidated damages within the times specified under this Agreement.
  - C. **Additional Costs.** In addition to the liquidated damages set forth under this section, Contractor agrees to pay all costs and expenses incurred by City due to Contractor's delay in performance to include inspection fees, superintendence costs, and travel expenses.
  - D. **Injunctive Relief.** The parties acknowledge that monetary damages may not be a sufficient remedy for Contractor's failure to achieve Final Completion in accordance with the terms of this Agreement, and that City shall be entitled, in addition to all other rights or remedies in law and equity, to seek injunctive relief.
7. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable

efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.

The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof, as soon as it becomes aware.

When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Contractor performance shall be extended for a number of days equal to the duration of the force majeure. Contractor shall be entitled to an extension of time only and, in no event, shall Contractor be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.

8. **INSPECTION AND ACCEPTANCE OF THE WORK.** Contractor shall report its progress to the City Project Manager as set forth herein. All services, work, and materials provided by Contractor under this Agreement shall be provided to the satisfaction and approval of the Project Manager.
  - A. The Project Manager shall decide all questions regarding the quality, acceptability, and/or fitness of materials furnished, or workmanship performed, the rate of progress of the work, the interpretation of the plans and specifications, and the acceptable fulfillment of the Agreement, in his or her sole discretion, based upon both the requirements set forth by City and the information provided by Contractor in its Proposal. The authority vested in the Project Manager pursuant to this paragraph shall be confined to the direction or specification of what is to be performed under this Agreement and shall not extend to the actual execution of the work.
  - B. Neither the Project Manager's review of Contractor's work nor recommendations made by Project Manager pursuant to this Agreement will impose on Project Manager any responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident Contractor's furnishing and performing the work.
9. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Document, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.

- A. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Contractor to carry out any obligation, term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Contractor written notice of termination in the manner specified for the giving of notices herein. Any notice of termination given to Contractor by City shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:
- (1) Contractor fails to timely and properly perform any of the services set forth in the specifications of the Agreement;
  - (2) Contractor provides material that does not meet the specifications of the Agreement;
  - (3) Contractor fails to complete the work required within the time stipulated in the Agreement; or
  - (4) Contractor fails to make progress in the performance of the Agreement and/or gives City reason to believe that Contractor cannot or will not perform to the requirements of the Agreement.
- B. **Contractor's Opportunity to Cure Default.** City may, in its sole discretion, provide Contractor with an opportunity to cure the violations set forth in City's notice of default to Contractor. Contractor shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Contractor to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.
- C. **City's Remedies Upon Contractor Default.** In the event that Contractor fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:
- (1) City shall be entitled to terminate this Agreement without further notice;
  - (2) City shall be entitled to hire another contractor to complete the required work in accordance with the needs of City;
  - (3) City shall be entitled to recover from Contractor all damages, costs, and attorney's fees arising from Contractor's default prior to termination; and
  - (4) City shall be entitled to recovery from Contractor any actual excess costs by: (i) deduction from any unpaid balances owed to Contractor; or (ii) placing a claim against the performance bond; or (iii) any other remedy as provided by law.



- D. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. The Project Manager shall provide written notice of the termination. Upon receipt of the notice, Contractor shall immediately discontinue all work as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Contractor shall be entitled to receive compensation solely for: (1) the actual cost of the work completed in conformity with this Agreement; and/or (2) such other costs incurred by Contractor as permitted under this Agreement and approved by City.
10. **DELAYS AND DAMAGES.** The Contractor agrees to make no claim for extra or additional costs attributable to any delays, inefficiencies, or interference in the performance of this contract occasioned by any act or omission to act by the City except as provided in the Agreement. The Contractor also agrees that any such delay, inefficiency, or interference shall be compensated for solely by an extension of time to complete the performance of the work in accordance with the provision in the standard specification.
11. **WARRANTY.** Contractor warrants that all labor, materials, and equipment furnished under the agreement are new, of the type and quality required for the Project, and installed in a good and workmanlike manner in accordance with the Contract Documents. Contractor shall guarantee that the work shall be free from any defects in workmanship for a period of not less than **ONE (1)** years from the date of Final Completion. Contractor shall guarantee that the materials provided shall be free from any defects for the longer of: (1) **ONE (1)** year from the date of Final Completion; or (2) the period of warranty provided by any supplier or manufacturer. All written manufacturers' warranties for materials supplied must be provided to the City Project Manager before final payment will be authorized.
12. **MANUFACTURER SERVICES.** Contractor shall furnish a manufacturer's representative as required to resolve assembly or installation problems with their products and/or systems. Contractor shall conduct, with the assistance of the manufacturer's/supplier's representative, start-up and operational tests on the equipment and system.
13. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Contractor's performance. Any such evaluation will become public record.
14. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any contractor who enters into an Agreement with the City of Ocala and fails to complete the contract term, for any reason, shall be subject to future bidding suspension for a period of **ONE (1)** year and bid debarment for a period of up to **THREE (3)** years for serious contract failures.



15. **CONTRACTOR REPRESENTATIONS.** Contractor expressly represents that:

- A. Contractor has read and is fully familiar with all the terms and conditions of this Agreement, the Contract Documents, and other related data and acknowledges that they are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the work to be performed by Contractor under this Agreement.
- B. Contractor has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Contractor in the Contract Documents, and that the City's written resolution of same is acceptable to Contractor.
- C. Contractor has had an opportunity to visit, has visited, or has had an opportunity to examine and ask questions regarding the sites upon which the work is to be performed and is satisfied with the site conditions that may affect cost, progress, and performance of the work, as observable or determinable by Contractor's own investigation.
- D. Contractor is satisfied with the site conditions that may affect cost, progress, and performance of the work, as observable or determinable by Contractor's own investigation.
- E. Contractor is familiar with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement whatsoever.
- F. **Public Entity Crimes.** Neither Contractor, its parent corporations, subsidiaries, members, shareholders, partners, officers, directors or executives, nor any of its affiliates, contractors, suppliers, subcontractors, or consultants under this Agreement have been placed on the convicted vendor list following a conviction of a public entity crime. Contractor understands that a "public entity crime" as defined in section 287.133(1)(g), Florida Statutes, is "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States..." Contractor further understands that any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime: (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

16. **CONTRACTOR RESPONSIBILITIES.** Except as otherwise specifically provided for in this Agreement, the following provisions are the responsibility of the Contractor:
- A. Contractor shall competently and efficiently supervise, inspect, and direct all work to be performed under this Agreement, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents.
  - B. Contractor shall be solely responsible for the means, methods, techniques, sequences, or procedures of construction and safety precautions or programs incident thereto.
  - C. Contractor shall be responsible to see that the finished work complies accurately with the contract and the intent thereof.
  - D. Contractor shall comply with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement, including, but not limited to obtaining all permits, licenses, and other authorizations necessary for the prosecution of the work and be responsible for all costs associated with same.
  - E. Contractor shall operate and cause all construction equipment and materials supplied for or intended to be utilized in the Project to be operated and stored in only those areas prescribed by City. This includes the operations of workmen.
  - F. Contractor shall be fully responsible for receipt, inspection, acceptance, handling, and storage of all construction equipment and materials supplied for or intended to be utilized in the Project, whether furnished by Contractor or City. Contractor shall be responsible for providing adequate safeguards to prevent loss, theft, damage, or commingling with other materials or projects.
  - G. Contractor shall continue its performance under this Agreement during the pendency of any dispute or disagreement arising out of or relating to this Agreement, except as Contractor and City may otherwise agree in writing.
17. **NO EXCLUSIVITY.** It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive arrangement with Contractor or as prohibit City from either acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.
18. **RIGHT OF ACCESS AND OTHER WORK PERFORMED BY THIRD PARTIES.** City may perform additional work related to the Project itself, or have additional work performed by utility service companies, or let other direct contracts therefore which shall contain General Conditions similar to these. Contractor shall afford the utility service companies and the other contractors who are parties to such direct contracts (or City, if City is performing the additional work with City's employees) reasonable opportunity for the introduction and

storage of materials and equipment and the execution of work and shall properly connect and coordinate his work with theirs.

- A. If any part of Contractor's work depends for proper execution or results upon the work of any such other contractor or utility service company (or City), Contractor shall inspect and promptly report to City in writing any latent or apparent defects or deficiencies in such work that render it unsuitable for such proper execution and results. Contractor's failure to so report shall constitute an acceptance of the other work as fit and proper for integration with Contractor's work except for latent or non-apparent defects and deficiencies in the other work.
- B. Contractor shall do all cutting, fitting, and patching of work that may be required to make the parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work, and will only cut or alter their work with the written consent of City.

19. **STORAGE OF MATERIALS/EQUIPMENT.** Contractor shall be fully responsible for receipt, inspection, acceptance, handling, and storage of equipment and materials (whether furnished by Contractor or City) to be utilized in the performance of or incorporated into the work.

20. **RESPONSIBILITIES OF CITY.** City or its representative shall issue all communications to Contractor. City has the authority to request changes in the work in accordance with the terms of this Agreement and with the terms in **Exhibit A – Scope of Work**. City has the authority to stop work or to suspend any work.

21. **COMMERCIAL AUTO LIABILITY INSURANCE.** Contractor shall procure and maintain, for the life of this Agreement, commercial auto liability insurance covering all automobiles owned, non-owned, hired, and scheduled by Contractor with a combined limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage for each accident. Contractor's commercial automobile liability insurance policy must name, as additional insureds: (i) City of Ocala, a political subdivision of the State of Florida, and its officials, employees, and volunteers; and (ii) the Florida Department of Environmental Protection and its employees, and officers.

22. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Contractor shall procure and maintain, for the life of this Agreement, commercial general liability insurance with minimum coverage limits not less than:

- A. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for bodily injury, property damage, and personal injury, and advertising injury; and

- B. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for contractual liability, products and completed operations, independent contractors, and property in the care, control or custody of the Contractor.
- C. Contractor's commercial general liability insurance policy shall include Endorsement CG 20 10 11 85, or equivalent, naming as additional insureds: (i) City of Ocala, a political subdivision of the State of Florida, and its officials, employees, and volunteers; and (ii) the Florida Department of Environmental Protection and its employees, and officers. The coverage shall contain no special limitation on the scope of protection afforded to City, the Florida Department of Environmental Protection, or their respective officials, employees, or volunteers.

23. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY COVERAGE.** Contractor shall procure and maintain, for the life of this Agreement, Workers' Compensation insurance and employer's liability coverage in amounts required by Florida law. If Contractor claims an exemption from workers' compensation coverage, Contractor must provide a copy of the Certificate of Exemption from the Florida Division of Workers' Compensation for all officers or members of an LLC claiming exemption who will be participating in the Work. Contractor is solely responsible for compliance with any Federal workers' compensation laws such as Jones Act and USL&H Act, including any benefits available to any workers performing work on this Project. In case any class of employees engaged in hazardous work under this Agreement is not protected under Worker's Compensation statutes, the contractor shall provide and cause each subcontractor to provide adequate insurance satisfactory to the Florida Department of Environmental Protection, for the protection of its employees not otherwise protected.

24. **MISCELLANEOUS INSURANCE PROVISIONS.**

- A. Insurance Requirements. These insurance requirements shall not relieve or limit the liability of Contractor. City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect Contractor's interests or liabilities but are merely minimums. No insurance is provided by the City under this contract to cover Contractor. **No work shall be commenced under this contract until the required Certificate(s) of Insurance have been provided.** Work shall not continue after expiration (or cancellation) of the Certificates of Insurance and shall not resume until new Certificate(s) of Insurance have been provided. Insurance written on a "Claims Made" form is not acceptable without consultation with City of Ocala Risk Management.

- B. Deductibles. Contractor is responsible for paying any and all deductibles or self-insured retention. Any deductibles or self-insured retentions above \$100,000 must be declared to and approved by the City. Approval will not be unreasonably withheld.
  - C. Certificates of Insurance. Contractor shall provide Certificates of Insurance, accompanied by copies of all endorsements required by this section, that are issued by an agency authorized to do business in the State of Florida and with an A.M. Best rating\* of A-V or greater. Renewal certificates must be forwarded to the **City of Ocala Contracting Department, Third Floor, 110 SE Watula Avenue, Ocala, FL 34471, E-Mail: [vendors@ocalafl.org](mailto:vendors@ocalafl.org)** prior to the policy expiration.
  - D. Failure to Maintain Coverage. In the event Contractor fails to disclose each applicable deductible/self-insured retention or obtain or maintain in full force and effect any insurance coverage required to be obtained by Contractor under this Agreement, Contractor shall be considered to be in default of this Agreement.
  - E. Severability of Interests. Contractor shall arrange for its liability insurance to include General Liability, Business Automobile Liability, and Excess/Umbrella Insurance, or to be endorsed to include a severability of interests/cross liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.
  - F. Mandatory Endorsements for All Required Policies. All required policies shall include: (i) endorsement that waives any right of subrogation against the City of Ocala and the Florida Department of Environmental Protection for any policy of insurance provided under this Agreement or under any state or federal worker's compensation or employer's liability act; and (ii) endorsement to give the City of Ocala and the Florida Department of Environmental Protection no less than **THIRTY (30)** days written notice (with the exception of non-payment of premium which requires a **TEN (10)** calendar day notice) in the event of cancellation or material change.
25. **SAFETY/ENVIRONMENTAL**. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall make an effort to detect hazardous conditions and shall take prompt action where necessary to avoid accident, injury or property damage. EPA, DEP, OSHA and all other applicable safety laws and ordinances shall be followed as well as American National Standards Institute Safety Standards. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

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

All, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the work shall continue until such time as the work is completed and accepted by City.

26. **TRAFFIC CONTROL AND BARRICADES.** The Contractor shall mitigate impact on local traffic conditions to all extents possible. The Contractor is responsible for establishing and maintaining appropriate traffic control and barricades. The Contractor shall provide sufficient signing, flagging and barricading to ensure the safety of vehicular and pedestrian traffic at all locations where work is being done under this Agreement.

- A. In addition to the requirements set forth in bid, the Contractor shall maintain at all times a good and sufficient fence, railing or barrier around all exposed portions of said work in such a manner as to warn vehicular and pedestrian traffic of hazardous conditions.
- B. Should Contractor fail to properly barricade his work or stored material sites in the manner outlined above, the City may have the necessary barricading done, and all cost incurred for said barricading shall be charged to the Contractor.

27. **WORK SITE AND CLEANUP.** Daily, during the progress of the work, Contractor shall keep the premises free from accumulations of waste materials, rubbish, and all other debris resulting from the work. At the completion of the work, Contractor shall remove all waste materials, rubbish, and debris from and about the premises, as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by City. Contractor shall provide an inventory listing of all surplus materials in an area designated by City. Contractor shall restore to their original condition those portions of the site not designated or alteration by the Contract.

28. **CONSTRUCTION SURVEY LAYOUT.** The work to be performed pursuant to survey work provided by City shall be completed as necessary to establish all proper alignments, right of way, easements, benchmarks, elevations and grade stakes to complete all phases of this Contract. Contractor shall immediately bring to City's attention any survey issues that would impede the Contractor's completion of the work. The work performed pursuant to survey

work at the Contractor's expense pursuant to this Agreement shall be prepared by a licensed surveyor and provided to the City. Any survey issues with these surveys that would impede the Contractor's completion of the work shall immediately be brought to the City's attention. If additional or corrective survey work is required, it shall be at Contractor's expense.

The City Engineer/City Project Manager shall establish a number of benchmarks on the project which in their opinion will enable the Contractor to perform the work. If Contractor shall remove or destroy any stake, marker or benchmark on the work without first having secured the approval of the City Engineer/City Project Manager, such stake, or benchmark shall be re-established by and at Contractor's expense. It shall be the responsibility of Contractor to preserve all adjacent property corner markers which might be affected by their operations, and replace same if undermined. Corner locations known by City will be made available to Contractor. All original field notes, calculations, and other documents developed by the surveyor in conjunction with this work shall be given to City and become City property. All surveying work must be in accordance with Chapters 177 and 472 of Florida Statutes and Chapter 61G17 of the Florida Administrative Code.

29. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.
30. **SUBCONTRACTORS.** Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City or its representatives to any subcontractor of Contractor or any other persons or organizations having a direct contract with Contractor, nor shall it create any obligation on the part of City or its representatives to pay or seek payment of any monies to any subcontractor of Contractor or any other persons or organizations having a direct contract with Contractor, except as may otherwise be required by law. City shall not be responsible for the acts or omissions of any Contractor, subcontractor, or of any of their agents or employees, nor shall it create any obligation on the part of City or its representatives to pay or to seek the payment of any monies to any subcontractor or other person or organization, except as may otherwise be required by law.



31. **EMERGENCIES.** In an emergency affecting the welfare and safety of life or property, Contractor, without special instruction or authorization from the City Project Manager, is hereby permitted, authorized and directed to act at its own discretion to prevent threatened loss or injury. Except in the case of an emergency requiring immediate remedial work, any work performed after regular working hours, on Saturdays, Sundays or legal holidays, shall be performed without additional expense to the City unless such work has been specifically requested and approved by the City Project Manager. Contractor shall be required to provide to the City Project Manager with the names, addresses and telephone numbers of those representatives who can be contacted at any time in case of emergency. Contractor's emergency representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice by City or public inspectors.
32. **INDEPENDENT CONTRACTOR STATUS.** Contractor acknowledges and agrees that under this Agreement, Contractor and any agent or employee of Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services and work required under this Agreement. Neither Contractor nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither Contractor nor its agents or employees shall have employee status with City. Nothing in this Agreement shall constitute or be construed to create any intent on the part of either party to create an agency relationship, partnership, employer-employee relationship, joint venture relationship, or any other relationship which would allow City to exercise control or discretion over the manner or methods employed by Contractor in its performance of its obligations under this Agreement.
33. **ACCESS TO FACILITIES.** City shall provide Contractor with access to all City facilities as is reasonably necessary for Contractor to perform its obligations under this Agreement.
34. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
35. **RIGHT OF CITY TO TAKE OVER CONTRACT.** Should the work to be performed by Contractor under this Agreement be abandoned, or should Contractor become insolvent, or if Contractor shall assign or sublet the work to be performed hereunder without the written consent of City, the City Project Manager shall have the power and right to hire and acquire additional men and equipment, supply additional material, and perform such work as deemed necessary for the completion of this Agreement. Under these circumstances, all expenses and costs actually incurred by City to accomplish such completion shall be credited to City along with amounts attributable to any other elements of damage and certified by the Project Manager.

The City Project Manager's certification as to the amount of such liability shall be final and conclusive.

36. **PUBLIC RECORDS.** The Contractor shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, the Contractor shall:
- A. Keep and maintain public records required by the public agency to perform the service.
  - B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
  - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency.
  - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: [clerk@ocalafl.org](mailto:clerk@ocalafl.org); City Hall, 110 SE Watula Avenue, Ocala, FL 34471.**

37. **AUDIT.** Contractor shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office

of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.

38. **PUBLICITY.** Contractor shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
39. **E-VERIFY.** Pursuant to section 448.095, Contractor shall register with and use the U.S. Department of Homeland Security's ("DHS") E-Verify System, accessible at <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all newly hired employees. Contractor shall obtain affidavits from any and all subcontractors in accordance with paragraph 2(b) of section 448.095, Florida Statutes, and maintain copies of such affidavits for the duration of this Agreement. By entering into this Agreement, Contractor certifies and ensures that it utilizes and will continue to utilize the DHS E-Verify System for the duration of this Agreement and any subsequent renewals of same. Contractor understands that failure to comply with the requirements of this section shall result in the termination of this Agreement and Contractor may lose the ability to be awarded a public contract for a minimum of one (1) year after the date on which the Agreement was terminated. Contractor shall provide a copy of its DHS Memorandum of Understanding upon City's request. Please visit [www.e-verify.gov](http://www.e-verify.gov) for more information regarding the E-Verify System.
40. **CONFLICT OF INTEREST.** Contractor is required to have disclosed, with the submission of their bid, the name of any officer, director, or agent who may be employed by the City. Contractor shall further disclose the name of any City employee who owns, directly or indirectly, any interest in Contractor's business or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of Ocala Procurement Department.
41. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
42. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the

applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.

43. **INDEMNITY.** Contractor shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, harm or personal injury to third persons during the term of this Agreement to the extent attributable to the actions of Contractor, its agents, and employees.
44. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
45. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

If to Contractor:

Earl's Well Drilling & Pump Service, Inc.  
Attention: Jeremy Skinner  
4680 SE 166<sup>th</sup> Street  
Summerfield, Florida 34491  
Phone: 352-245-2324  
Email: [jeremy.earlswell@embarqmail.com](mailto:jeremy.earlswell@embarqmail.com)

If to City of Ocala:

Tiffany Kimball, Contracting Officer  
110 SE Watula Avenue, 3rd Floor  
Ocala, Florida 34471  
Phone: 352-629-8366 Fax: 352-690-2025  
E-mail: [tkimball@ocalafl.org](mailto:tkimball@ocalafl.org)

Copy to:

Robert W. Batsel, Jr.  
Gilligan, Gooding, Batsel, Anderson, & Phelan P.A.  
1531 SE 36<sup>th</sup> Avenue  
Ocala, Florida 34471  
Phone: 352-867-7707 Fax: 352-867-0237  
E-mail: [rbatsel@ocalalaw.com](mailto:rbatsel@ocalalaw.com)

46. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.

47. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

48. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.

49. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
50. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
51. **MUTUALITY OF NEGOTIATION.** Contractor and City acknowledge that this Agreement is a result of negotiations between Contractor and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
52. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
53. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
54. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
55. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
56. **ELECTRONIC SIGNATURE(S).** Contractor, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains

a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.

57. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
58. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on \_\_\_\_\_.

**ATTEST:**

**CITY OF OCALA**

\_\_\_\_\_  
Angel B. Jacobs  
City Clerk

\_\_\_\_\_  
Ken Whitehead  
Assistant City Manager

**Approved as to form and legality:**

**EARL'S WELL DRILLING & PUMP SERVICE, INC.**

\_\_\_\_\_  
Robert W. Batsel, Jr.  
City Attorney

\_\_\_\_\_  
By: \_\_\_\_\_  
(Printed Name)

Title: \_\_\_\_\_  
(Vice-President or higher)



**BACKGROUND**

1. Water Well Contractor will provide well drilling services supporting the NS052 Tusawilla Drainage Well Installation.
2. Contractor shall provide all materials, labor and equipment to drill and install one (1) functional drainage well.

**GENERAL CONSTRUCTION**

1. Contractor shall drill out and set steel casing for one (1) new ten inch (10") non-portable drainage wells:  
A. Drainage Well NE 13 at the 400 block of NE Sanchez Avenue.
2. Contractor shall drill out of casing to a viable cavern formation that will produce needed water volume for that size diameter casing.
3. The quantities in the line items are estimated only and may not reflect the actual depths in the field.
4. **Working Hours:** The normal working hours for this project are 7:00 AM – 5:00 PM Monday through Friday, excluding holidays. Contractor shall provide (forty-eight) 48 hour advance notice to City Project Manager for work outside normal shift hours. The City may decline the request.
5. **Mobilization:** Obtain required permits and the move Contractors operations and equipment required for construction. Provide on-site construction power and wiring, as-needed. Provide on-site sanitary facilities as required by governing agencies. Posting of OSHA required notices and establishing of safety programs and procedures.

**PROJECT SPECIFICATIONS**

This project will require the Contractor to follow the following documents and specifications:

1. Proposed line items cost in contract.
2. Location map of site locations attached as **Exhibit B**.
3. Copies of the Florida Department of Environmental Protection (FDEP) permits attached as **Exhibit C**.
4. Grant clauses attached as **Exhibit D**.
5. Drainage well structure details for the project attached as **Exhibit E**.
6. City of Ocala Standard Specifications for Construction of Streets, Stormwater, Traffic, Water and Sewer Infrastructure available at: <https://bidocala.com/wp-content/uploads/City-of-Ocala-Standard-Specifications-for-Construction-8.02.21.pdf>
7. Contractor must have the above listed documents in addition to up to date copies of shop drawings, plans and bid document at job sites at all times.

**CONTRACTOR EMPLOYEES AND EQUIPMENT**

1. Contractor must utilize competent employees in performing the work. Employees performing the work must be properly licensed or qualified as required by the scope.
2. Contractor shall provide an assigned Project Manager, who will be the primary point of contact. Contractor must provide a valid telephone number, email, and address at all times to the City Project

Manager. The telephone must be answered during normal working hours or voicemail must be available to take a message.

3. At the request of the City, the Contractor must replace any incompetent, unfaithful, abusive, or disorderly person in their employment. The City and the Contractor must each be promptly notified by the other of any complaints received.
4. Contractor's employees must wear suitable work clothes and personal protective equipment as defined by OSHA (hard hats, bucket harnesses, etc.) and meeting Manual on Uniform Traffic Control Devices (MUTCD) and National Electrical Safety Code (NESC) requirements as indicated for all work conducted and be as clean and in as good appearance as the job conditions permit.
5. Contractor shall operate as an independent contractor and not as an agent, representative, partner or employee of the City of Ocala, and shall control their operations at the work site, and be solely responsible for the acts or omissions of their employees.
6. No smoking is allowed on City property or projects.
7. Contractor must possess/obtain all required equipment to perform the work. A list of equipment shall be provided to the City upon request.
8. All company vehicles and uniforms must display a visible company name/logo.

### CONTRACTOR RESPONSIBILITIES

1. Contractor shall complete all work performed under this contract in accordance with policies and procedures of the City of Ocala and all applicable State and Federal laws, policies, procedures, and guidelines.
2. Contractor shall obtain and pay for any and licenses, additional equipment, dumping and/or disposal fees, etc., required to fulfill this contract.
3. Construction and installation shall be in compliance with all requirements and instructions of applicable manufacturers.
4. Contractor shall be responsible for inspector's overtime.
5. Contractor is responsible for any and all damages including but not limited to buildings, curbing, pavement, landscaping, fencing, or irrigation systems caused by their activity. Should any public or private property be damaged or destroyed, the Contractor, at their expense, shall repair or make restoration as acceptable to the City of destroyed or damaged property no later than one (1) month from the date damage occurred.

### SUB-CONTRACTORS

1. Sub-contractors are not allowed for this project.
2. Contractor must perform **100%** of the work with their own forces.

**SITE HOUSEKEEPING AND CLEANUP**

1. **Waste/Debris:** Contractor shall keep the premises free at all times from accumulation of waste materials and rubbish caused by operations and employees. Contractor shall provide approved containers for collection and disposal of waste materials, debris, and rubbish. Contractor shall dispose of debris in a legal manner. At least once weekly dispose of such waste materials, debris, and rubbish off-site.
2. **Cleanup:** Periodic cleanup to avoid hazards or interference with operations at the site, and to leave the site in a reasonable neat condition. Work site shall be completely cleaned after each day of work. Sweep all roadways affected by the construction and where adjacent to work daily.
3. **Final Cleaning:** Upon completion of work, clean entire work area/project site as applicable.
  - A. Leave the work and adjacent areas affected in a cleaned condition satisfactory to the City Project Manager.
  - B. Contractor shall clean and remove from the premises, all surplus and discarded materials, rubbish, and temporary structures, and shall restore in an acceptable manner all property, both public and private, which has been damaged during the prosecution of the work and shall have the work in a neat and presentable condition. *Note: Any and all debris shall be removed from the premises. New construction debris, trash, etc., shall not be left or buried on site.*
  - C. Broom clean exterior paved driveways and parking areas and hose clean sidewalks and concrete exposed surfaces if impacted by work or included in work area.
  - D. All work areas must be returned to original condition.

**SUBMITTALS**

1. Provide submittals as required by City of Ocala Standard Specifications for Construction of Streets, Stormwater, Traffic, Water and Sewer Infrastructure.
2. Submit copies of permits and approvals for construction as required by laws and regulations of governing agencies.
3. Submit temporary construction parking area plans, storage yard, storage trailer location, staging area plan, and plan for disposal of waste materials.

**SAFETY**

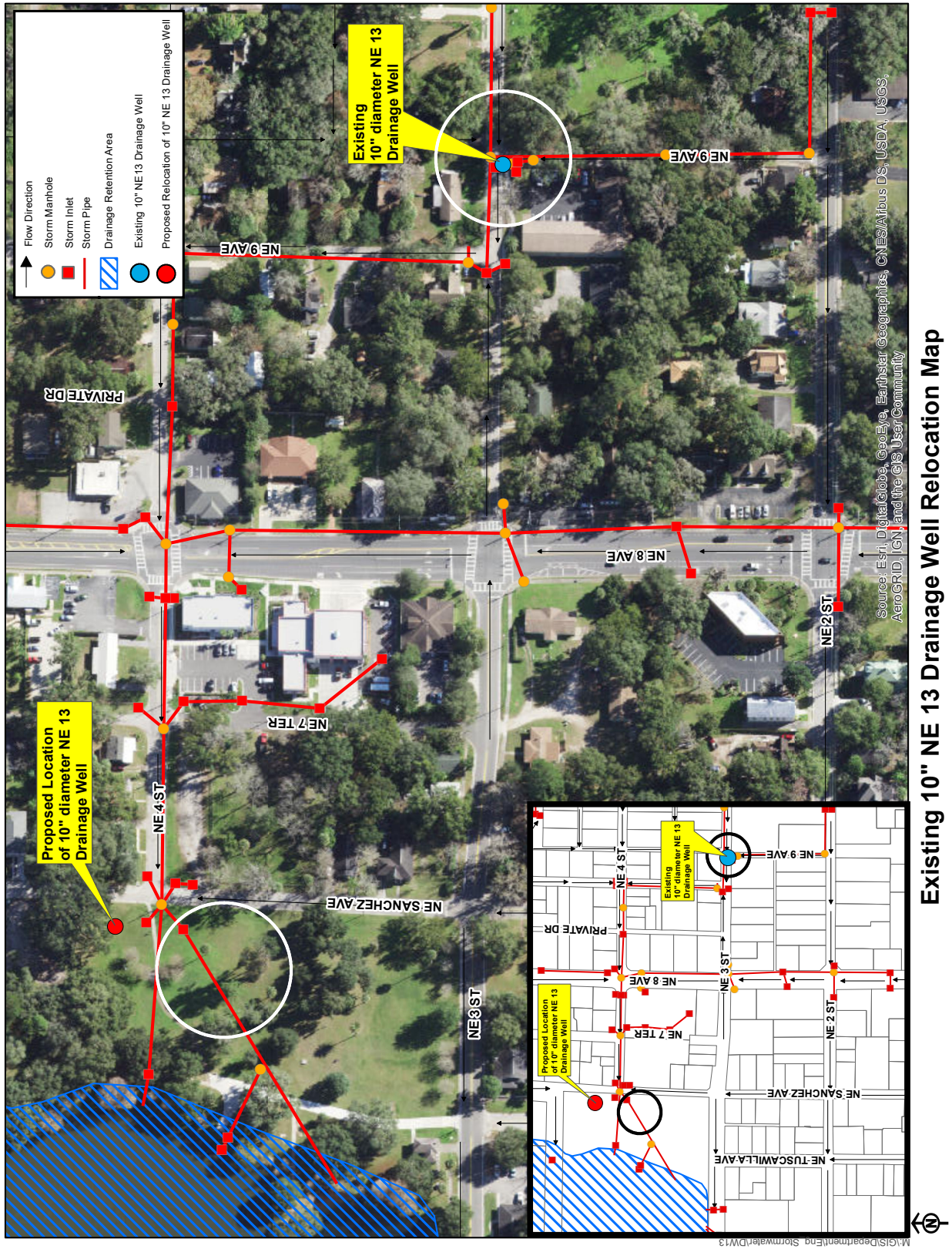
1. Contractor is solely responsible for ensuring safety during construction, and for conformance to all applicable OSHA standards; and local, state, and national codes concerning safety provisions for their employees, sub-contractors, all building and site occupants, staff, public, and all persons in or around the work area.
2. Job site visits by City staff do not constitute approval, awareness, or liability for any hazardous condition.
3. Contractor shall be responsible for securing their equipment, materials, clothing, and other property.
4. Prior to completion, storage and adequate protection of all material and equipment will be the Contractor's responsibility.

5. In no event shall the City be responsible for any damages to any of the Contractor's equipment, materials, property, or clothing lost, damaged, destroyed or stolen.

**PRICING**

1. Line item pricing shall include all services, labor, direct and indirect costs to complete the project and described herein.
2. The line item quantities in the contract are estimates and may not reflect the actual depths in the field. Quantities should not be construed as guaranteed minimums.
3. The City will pay Contractor only for the actual units that the Contractor provides, installs, or constructs.





Existing 10" NE 13 Drainage Well Relocation Map

July 13, 2021

Sent via Electronic Mail  
[slanier@ocalafl.org](mailto:slanier@ocalafl.org)

Sean Lanier, P.E., CFM  
City Engineer/Director  
City of Ocala/ Engineering and Water Resources Department  
1805 NE 30th Avenue  
Ocala, FL 32470

Marion County – UIC  
Lake Tuscawilla Basin Drainage Well – NE 13  
WACS ID # 103473  
**Approval to Replace One Existing Drainage Well**

Dear Mr. Lanier:

The Department reviewed an email dated July 8, 2021 from City of Ocala's storm water Engineer Payal Pandya, P.E. requesting a replacement of existing drain well NE 13 that is located within the Lake Tuscawilla Drainage Basin. A video log was provided documenting that the well is not functioning properly. Based on our review, the Department approves the installation of replacement drainage well NE 13 as outlined below;

- Existing drainage well #NE 13 (10" diameter) is to be replaced with one 10" diameter drainage well.
- The existing drain well NE 13 is 144 feet deep with a casing depth at 64 feet below grade. This well configuration is to be used for the replacement drain well.
- The existing drain well is currently located at the intersection of NE 3<sup>rd</sup> Street and NE 9<sup>th</sup> Street and it will be replaced at the intersection of NE 4<sup>th</sup> Street and NE Sanchez Avenue (Parcel # 28220-000-00).

Please be advised that the total depth of new replacement well may not be the same as original depth of the existing well. Should the replacement drainage well need to be drilled deeper than original depth, please contact the Department for prior approval. Final replacement well specifications must be based on observed field conditions during drilling and installation activities. Once the new replacement drainage well has been

installed, the old drainage well must be properly abandoned in accordance with the requirements stipulated in Rule 62-532(500) Florida Administrative Code. Please contact the Department at least 3 days prior to commencement of field work.

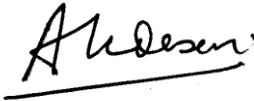
Within 90 days of completion of installation of replacement drain well and abandonment of existing drainage well, please submit the report to the Department including all well construction & abandonment details, an aerial map depicting the locations existing and replacement drainage well locations, and any wellhead treatment system(s) installed on new replacement drainage well. Please submit the report in electronic format to [DEP\\_CD@dep.state.fl.us](mailto:DEP_CD@dep.state.fl.us), with a copy to [Anil.Desai@dep.state.fl.us](mailto:Anil.Desai@dep.state.fl.us). If the file is very large, you may post it to the Waste Cleanup folder on the Central District's ftp site at:

[ftp://ftp.dep.state.fl.us/pub/incoming/Central\\_District/Waste\\_Cleanup](ftp://ftp.dep.state.fl.us/pub/incoming/Central_District/Waste_Cleanup).

After posting the document, send an e-mail to [DEP\\_CD@dep.state.fl.us](mailto:DEP_CD@dep.state.fl.us), with a copy to [Anil.Desai@dep.state.fl.us](mailto:Anil.Desai@dep.state.fl.us) alerting us that it has been posted.

Should you have any questions concerning this approval, please contact me at (407) 897-4116 or via e-mail at [Anil.Desai@dep.state.fl.us](mailto:Anil.Desai@dep.state.fl.us).

Sincerely,



Anil K. Desai, P.G.  
Professional Geologist III  
Permitting and Waste Cleanup Program

AKD/lb/akd

c: Payal Pandya, P.E, City of Ocala ([ppandya@ocalafl.org](mailto:ppandya@ocalafl.org))  
DEP Staff: Cindy Fischler, Anil Desai, P.G., Lu Burson, Reggie Phillips



*All references below to "AGENCY" refer to the City of Ocala.*

### **NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES**

**FLOW DOWN.** The No Obligation clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

**No Federal Government Obligation to Third Parties.** The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FEDERAL GRANTING AGENCY. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

49 U.S.C. § 5323(l) (1); 31 U.S.C. §§ 3801-3812; 18 U.S.C. § 1001; 49 C.F.R. part 31

**FLOW DOWN.** The Program Fraud clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

**Program Fraud and False or Fraudulent Statements or Related Acts.** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and federal regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FEDERAL GRANTING AGENCY assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FEDERAL GRANTING AGENCY under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FEDERAL GRANTING AGENCY. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**ACCESS TO RECORDS AND REPORTS**

49 U.S.C. § 5325(g); 2 C.F.R. § 200.333; 49 C.F.R. part 633

**FLOW DOWN.** The record keeping and access requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

**Access to Records and Reports.**

- A. **Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- B. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. **Access to Records.** The Contractor agrees to provide sufficient access to FEDERAL GRANTING AGENCY and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- D. **Access to the Sites of Performance.** The Contractor agrees to permit FEDERAL GRANTING AGENCY and its contractors access to the sites of performance under this contract as reasonably may be required.

**FEDERAL CHANGES**

49 CFR Part 18

**FLOW DOWN.** The Federal Changes requirement flows down appropriately to each applicable changed requirement.

**Federal Changes.** Contractor shall at all times comply with all applicable FEDERAL GRANTING AGENCY regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FEDERAL GRANTING AGENCY, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**TERMINATION**

2 C.F.R. § 200.339; 2 C.F.R. part 200, Appendix II (B)

**FLOW DOWN.** For all contracts in excess of \$10,000, the Termination clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

**Termination for Convenience (General Provision).** The AGENCY may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the AGENCY's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to AGENCY to be paid

the Contractor. If the Contractor has any property in its possession belonging to AGENCY, the Contractor will account for the same, and dispose of it in the manner AGENCY directs.

**Termination for Convenience or Default (Cost-Type Contracts).** The AGENCY may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of AGENCY or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the AGENCY, or property supplied to the Contractor by the AGENCY. If the termination is for default, the AGENCY may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the AGENCY and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of AGENCY, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the AGENCY determines that the Contractor has an excusable reason for not performing, the AGENCY, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

**Termination for Default [Breach or Cause] (General Provision).** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the AGENCY may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the AGENCY that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the AGENCY, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

**Termination for Default (Supplies and Service).** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the AGENCY.

**Waiver of Remedies for any Breach.** In the event that AGENCY elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by AGENCY shall not limit AGENCY's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

**Opportunity to Cure (General Provision).** The AGENCY, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to AGENCY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from AGENCY setting forth the nature of said breach or default, AGENCY shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude AGENCY from also pursuing all available remedies against Contractor and its sureties for said breach or default.

### CIVIL RIGHTS LAWS AND REGULATIONS

**FLOW DOWN.** The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

**Civil Rights and Equal Opportunity.** The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FEDERAL GRANTING AGENCY to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FEDERAL GRANTING AGENCY may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FEDERAL GRANTING AGENCY may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," and 45 C.F.R. part 90, the Contractor agrees to refrain from

discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FEDERAL GRANTING AGENCY may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, and 42 U.S.C. § 4151 et seq., the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FEDERAL GRANTING AGENCY may issue.

*(Applies to \$25,000+)*

**GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

2 C.F.R. part 180; 2 C.F.R. part 1200; 2 C.F.R. § 200.213; 2 C.F.R. part 200 Appendix II (I); Executive Order 12549; Executive Order 12689

**FLOW DOWN.** Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

**Debarment, Suspension, Ineligibility and Voluntary Exclusion.** The Contractor shall comply and facilitate compliance with federal regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FEDERAL GRANTING AGENCY official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- A. Debarred from participation in any federally assisted Award;
- B. Suspended from participation in any federally assisted Award;
- C. Proposed for debarment from participation in any federally assisted Award;
- D. Declared ineligible to participate in any federally assisted Award;
- E. Voluntarily excluded from participation in any federally assisted Award; or
- F. Disqualified from participation in any federally assisted Award.

**By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:**

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

*(Applies to \$250,000+)*

**VIOLATION AND BREACH OF CONTRACT**

2 C.F.R. § 200.326; 2 C.F.R. part 200, Appendix II (A)

**FLOW DOWN.** The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier.

**Rights and Remedies of the AGENCY.** The AGENCY shall have the following rights in the event that the AGENCY deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include the occurrence of any one or more of the following events:

1. Contractor fails to timely and/or properly perform any of the services set forth in the specifications of the Agreement; or
2. Contractor fails to make progress in the performance of the Agreement and/or gives City reason to believe that Vendor cannot or will not perform to the requirements of the Agreement.

**Rights and Remedies of Contractor.** Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the AGENCY, the Contractor expressly agrees that no default, act or omission of the AGENCY shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the AGENCY directs Contractor to do so) or to suspend or abandon performance.

**Remedies.** Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the AGENCY will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein.

The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the AGENCY takes action contemplated herein, the AGENCY will provide the Contractor with sixty (60) days written notice that the AGENCY considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

**Disputes.** The AGENCY and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the AGENCY and the Contractor's organization.



In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the AGENCY's direction or decisions made thereof.

**Performance during Dispute.** Unless otherwise directed by AGENCY, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages.** Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies.** Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the AGENCY and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the AGENCY is located.

**Rights and Remedies.** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

No action or failure to act by the AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

*(Applies to \$100,000+)*

#### **LOBBYING RESTRICTIONS**

31 U.S.C. § 1352; 2 C.F.R. § 200.450; 2 C.F.R. part 200 appendix II (J); 49 C.F.R. part 20

**FLOW DOWN.** The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352(b)(5).

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.



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

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

\_\_\_\_\_  
Signature of Contractor's Authorized Official  
\_\_\_\_\_  
Name and Title of Contractor's Authorized Official  
\_\_\_\_\_  
Date

**CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

42 U.S.C. §§ 7401 – 7671q; 33 U.S.C. §§ 1251-1387; 2 C.F.R. part 200, Appendix II (G)

**FLOW DOWN.** The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- 3) It will report violations of use of prohibited facilities to FEDERAL GRANTING AGENCY; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

Bidder agrees to comply with all applicable grant terms contained herein. Compliance and acceptance of these grant terms is a condition of the solicitation. Bidders must return a complete and executed **Exhibit E – Grant Clauses** with their submittal.

**Company Name:** \_\_\_\_\_

**Date**

**X** \_\_\_\_\_

\_\_\_\_\_

**Signer Name**

**Signer Title**

\_\_\_\_\_

\_\_\_\_\_

Drainage Well Structure Details, dated 11/01/2021  
are available for inspection and copying at  
1805 NE 30<sup>th</sup> Avenue, Building 700,  
Ocala, Florida 34470