

APPENDIX B

CONTRACT

IN CONSIDERATION OF the mutual promises, covenants and conditions contained herein this agreement is made on _____(date), by and between the City of Fellsmere, a municipal corporation of Indian River County in the State of Florida (hereinafter referred to as *City*), and _____ of _____(address), _____(City), _____ County, _____(state), duly licensed as a contractor in _____(state), holding currently valid Contractor's License no. _____, (hereinafter referred to as *Contractor*), effective as hereinafter set forth.

1.0 The Work. Contractor shall furnish, except as otherwise provided, at contractor's own cost and expense, all labor, services, material, and work for the construction and completion of the work to be done under this contract (hereinafter referred to as *the Work*), which is generally described as follows:

DESIGN AND CONSTRUCTION OF ALLEYWAY GRADING

Construction of stormwater conveyance and treatment swales along alleyways and construction of control structure and outfall pipe to the Fellsmere Water Control District Ditches, where required.

(hereinafter referred to as *Project*).

Contractor will construct and complete the Work in a thorough, skillful and substantial manner in every respect to the satisfaction and approval of Andy Shelton, City of Fellsmere Public Works Director, 22 South Orange Street, Fellsmere, FL 32948 [hereinafter referred to as *the Project Manager*], within the time specified in this contract and in strict accordance with the instructions and information contained in the Request for Proposals, Proposal Forms, this contract, any performance or other surety bond, the specifications, and drawings. including all addenda incorporated in any of the above-mentioned documents before the execution of this contract. All of the above documents are made a part of this contract and form the *Contract Document* as fully as if set forth at length herein.

1.2. Contractor shall execute work shown on the drawings even though not particularly described in specifications and all work described in the specifications even though not shown on the drawings. Contractor shall furnish everything necessary for the proper and complete execution of the work even though express reference to any detail of it is omitted from either the drawings or specifications.

2.0 City Representative. The Project Manager shall act as City's representative, assume all duties and responsibilities and have the rights and authority assigned to the Project Manager in the Contract Documents with respect to completion of the Work in accordance with the Contract Documents.

3.0 Contract Time. All of the Work shall be completed for the entire Project and ready for

final payment within _____() calendar days from the date when Contract Time commences to run. The parties recognize that time is of the essence with respect to this Agreement and the Work. Failure to timely complete the Work as provided herein shall subject the Contractor to the Liquidated Damages provision which is set forth in Article G. of the Supplemental Conditions. The construction of the Work shall commence no later than ten (10) days after the date for commencement in the Notice to Proceed.

4.0 Drawings And Specifications.

4.1. The Contract Documents, which comprise the entire agreement between City and Contractor concerning the Work, are set forth in the attached Exhibit "A." There are no other Contract Documents other than those set forth on Exhibit "A." Contract Documents shall be amended as provided in paragraph 3.04 of the General Conditions to incorporate the required Contractor survey and set final elevations. Contract Documents may be further amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

4.2. Any copies of the drawings and specifications that are reasonably required for the execution of the work will be furnished to contractor free of charge, unless otherwise provided.

4.3. Contractor shall keep him/her/itself supplied with the latest issues of all drawings and specifications and shall keep one copy of the same at the site of the work in good order available to Designer.

4.4. The drawings and specifications, and any copies of the drawings and specifications, are and shall remain the property of City and shall not be reused on other work by contractor. These documents shall be delivered to the Designer at the completion of the work, or earlier if required.

4.5. City shall promptly furnish contractor with any additional instructions, by means of drawings or otherwise, as are required to proceed with the Work. Specifically, Contract Documents shall be amended as provided in paragraph 3.04 of the General Conditions to incorporate the required Contractor survey and set final elevations. All such drawings and instructions shall be consistent with, and reasonably inferable from, the contract. The Work shall be executed in conformity with these instructions. Contractor shall do no work without proper drawings and instructions.

5.0 Contract Price; Compensation. In addition to the extra charges expressly mentioned and provided for herein, City shall pay and Contractor shall receive the prices stipulated in the proposal attached to this contract as Exhibit "B" as full and complete compensation for everything furnished and done by Contractor under this contract, including loss or damage arising out of the Work or from the action of the elements; for any unforeseen obstruction or difficulty encountered in the prosecution of the Work; for all risks of every description associated with the Work; for all expenses incurred due to the suspension or discontinuance of the Work; and for well and faithfully completing the Work as provided in this Agreement.

6.0 Method Of Payment.

6.1 Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Project Manager as provided in the General Conditions.

6.2 Progress Payments. City shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payments as recommended by Project Manager, on or about the 10th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraphs 2.05 and 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements. Partial and final release of liens satisfactory to the City and the Project Manager demonstrating that the previously paid monies have been used to satisfy all cost incurred in the performance of the work shall be required. (Submit application to the Project Manager by the 25th of preceding month)

6.2.1. Prior to Final Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Designer determine, or City may withhold, in accordance with paragraph 14.02.B.5. of the General Conditions:

95% of Work completed, and
95% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to City as provided in paragraph 14.02 of the General Conditions).

6.3. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, City shall pay the remainder of the Contract Price as recommended by the Designer as provided in said paragraph 14.07.C.

6.4 The monies due hereunder shall not bear interest.

7.0. Contractor's Representations. As an inducement for City to enter into this Agreement Contractor makes the following representations.

7.1. Contractor has familiarized itself with the nature and extent of the Contract Documents, the Work, site, locality, and all other local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

7.2. Contractor has carefully studied all reports of explorations and tests of subsurface conditions and drawings of physical conditions, which are identified in the Supplemental Conditions as provided in paragraph 2.05 of the General Conditions.

7.3. Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and

studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

7.4. Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by Contractor in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.04 of the General Conditions.

7.5. Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.6. Contractor has given the Designer written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Project Manager is acceptable to Contractor.

8.0 Notice. Notice shall be given as provided in Article 17 of the General Conditions. The addresses of City, Contractor, and the Project Manager for the purpose of giving notice are as follows:

City of Fellsmere:
Grant Administrator
City of Fellsmere
22 South Orange Street
Fellsmere FL 32948-6714
Email: grantadmin@cityoffellsmere.org

Contractor:

Facsimile: _____
Email: _____

Project Manager:
Andy Shelton, Public Works Director

City of Fellsmere
22 South Orange Street
Fellsmere, FL 32948-6714
Email: pwdirector@cityoffellsmere.org

9.0 Archeological Requirements. If any archeological remains are discovered during ground disturbance or construction, work shall cease immediately and the City of Fellsmere and the Florida Division of Historic Resources shall be contracted immediately to determine what further action, if any, will be necessary to comply with Section 106 of the National Historic Preservation Act.

10.0 Public Records.

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 22 SOUTH ORANGE STREET, FELLSMERE, FLORIDA 32948 (772) 646-6301
CITYCLERK@CITYOFFELLSMERE.ORG

10.1 Requirements. The Contractor shall comply with Florida public records law, specifically to:

10.1.1 Keep and maintain public records required by the City to perform the service.

10.1.2 Upon request from the City's custodian of public records, provide the City 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 Section 119.07 F.S., as amended, or as otherwise provided by law.

10.1.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.

10.1.4 Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City 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 City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

10.2 Requests. Requests for public records shall be processed as follows:

10.2.1 If Contractor receives a request to inspect or copy public records relating to the City's contract with the Contractor, the Contractor shall advise the requesting party that the request must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Contractor of the request, and the Contractor must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

10.2.2 If the Contractor does not comply with the City's request for the records, such refusal to comply shall constitute grounds for immediate cancellation of this contract at the sole discretion of the City.

10.2.3 Should the Contractor fail to provide the public records to the City within a reasonable time the Contractor may be subject to penalties under Section 119.10 F.S.

10.3 Enforcement. Enforcement of requests for public records by civil action will be processed as follows:

10.3.1 If a civil action is filed against the Contractor to compel production of public records relating to the City's contract for services, the Court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorneys' fees, if:

- (a) The Court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and
- (b) At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the City and to the Contractor.

10.3.2 A notice complies with subparagraph 17.03.1(b) if is sent to the City's custodian of public records and to the Contractor at the Contractor's address listed in this contract or to the Contractor's registered agent. Such notice must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

10.3.3 A Contractor who complies with public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

11.0 Execution. City and Contractor each binds itself, and as the case may be, its partners, its permitted successors and assigns, and its legal representatives to the other party hereto and to that parties' partners, permitted successors and assigns, and legal representatives with respect to all covenants, agreements and obligations contained in the Contract Documents. If not otherwise specifically set forth, this Agreement shall be effective on the date of the last of the parties to sign.

IN WITNESS WHEREOF, each party to this Contract has caused it to be executed in triplicate at _____ (*place of execution*) on the date(s) indicated below. This Contract will be effective on _____.

Dated: _____

Dated: _____

City of Fellsmere

Contractor: _____

By: _____
Print Name and Title

By: _____
Print Name and Title

STATE OF FLORIDA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____ (name of person) as _____ (type of authority, . . . e.g. officer, trustee, attorney in fact) for _____ (name of party on behalf of whom instrument was executed).

Notary Public - State of Florida
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known _____ OR Produced Identification _____
Type of Identification Produced: _____

EXHIBIT “A”

**CONTRACTORS DOCUMENTS
OUTLINE**

- **Statement on Public Entity Crimes (Attachment 1 to RFP)**
- **Build America Buy America (BABA) Certification (Attachment 2 to RFP)**
- **Byrd Anti-Lobbying Amendment Certification (Attachment 3 to RFP)**
- **General and Supplemental Conditions (Attachment 4 to RFP)**
- **Technical Specifications (Attachment 5 to RFP)**

EXHIBIT "B"