

[Solicitation Number]  
[Project / Contract Name]  
[Vendor/Contractor Name]

E1 Contract # \_\_\_\_\_  
Board Approval Date: \_\_\_\_\_

## **MASTER CONSTRUCTION AGREEMENT**

**Commented [TN1]:** Note: This contract template is for annual agreements with project awards made on a per-project basis. If you are contracting one big construction project, use the DOT Construction Contract.

LEE COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners, situated at 2115 Second St., Fort Myers, FL 33901 (the "County"), hereby contracts with [Contractor's name exactly as it appears on Sunbiz] (the "Contractor") of [Contractor's primary business address] a [Contractor's state] contractor licensed to perform all Work in the State of Florida in connection with the County's Solicitation No. [Solicitation Number] (the "Project"), as said Work is set forth in the Plans and Specifications prepared by [Engineer of Record's name], the "Engineer of Record," and other Contract Documents hereafter specified (the "Work").

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

### Section 1. Contract Documents.

A. The Contract Documents consist of this Agreement, the Exhibits described in Section 6 hereof, the legal advertisement, the instructions to bidders, the Proposal and Proposal Forms, the solicitation documents and any duly executed and issued addenda, the Contractor's proposal, County Project Authorizations, County Project Modifications, Field Directive Change Orders, and amendments relating thereto. All of the foregoing Contract Documents are incorporated by reference and made a part of this Agreement with the exception of the solicitation which shall be incorporated to the extent that it does not conflict with the remainder of the Agreement (all of said documents including the Agreement sometimes being referred to herein as the "Contract Documents" or "Contract" and sometimes as the "Agreement"). A copy of the Contract Documents shall be maintained by Contractor at the Project Site at all times during the performance of the Work.

B. The Engineer of Record is the initial interpreter of the Contract Documents concerning design intent, but is not the judge between the County and the Contractor. The County reserves the right to make final decisions considering the Engineer of Record's recommendations or interpretations of the Contract Documents. The Engineer of Record does not have authority to obligate or commit the County to fund additional expenditures or approve extensions of time over the approved Contract Time or Amount. However, the Engineer of Record's interpretation as to the intent of her or his design shall be final and not subject to interpretation by the County's staff.

C. The Construction Engineering and Inspection Consultant ("CEI Consultant") is the initial interpreter of the Contract Documents in all matters not concerning design intent. The CEI Consultant shall administer, monitor, test, sample, and inspect the Construction of the Project to ensure that the Project is constructed in reasonable conformity with the plans, specifications, and special provisions of the Contract Documents and shall observe the Contractor's work to determine the progress and quality of work, identify discrepancies, report significant discrepancies to the County, and direct the Contractor to correct such observed discrepancies. The County reserves the right to

make final decisions considering the CEI Consultant's recommendations or interpretations of the Contract Documents. The CEI Consultant may issue Field Directive Change Orders to the Contractor, but the CEI Consultant does not have authority to change the scope of the Project, obligate or commit the County to fund additional expenditures, or approve extensions of time over the approved Contract Time or Amount. The CEI Consultant shall consult with the Engineer of Record regarding any questions concerning the intent of the Project design.

D. Any Work that may be reasonably inferred from the Plans and Specifications as being required to produce the intended result shall be supplied whether or not it is specifically called for. In case of any inconsistency or conflict among the provisions of the Contract Documents, the order of precedence shall be as follows: (1) County Project Modifications; (2) County Project Authorizations; (3) the Agreement, including amendments and Exhibits; (4) Field Directive Change Orders; (5) the solicitation documents, including any addenda. Exhibit G, Article 5-2 provides the order of precedence for Specifications, Plans, Special Provisions, Technical Special Provisions, and other Project specifications. The Contract Documents represent the entire and integrated Agreement between the parties hereto, and supersede prior negotiations, representations, or agreements, either written or oral.

E. Work, materials or equipment described in words which have a well-known technical or trade meaning, shall be deemed to refer to such recognized standards.

F. The County shall furnish to the Contractor Contract Documents in electronic form and PDF file format.

G. The Contractor agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the County.

H. The Work to be provided by Contractor for the Project shall be under the general direction of the CEI Consultant, or their successor, who shall act as the County's representative during the term of this Agreement. If the County's representative is not a County employee, then County's representative is not authorized to issue changes to the Contract Amount, Contract Time, or Scope of Work without express approval by the County Director, County Manager, or Board of County Commissioners.

## Section 2. Scope of Work.

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

B. The Work shall be prosecuted and administered in accordance with the Standard Specifications attached hereto and incorporated herein as Exhibit G and all County Project Authorizations.

C. A County Project Authorization shall be issued by the County before commencement of any Work related to this Agreement. Contractor acknowledges and agrees that no minimum order or amount of Work is guaranteed under this Contract and County may elect to issue no County Project Authorizations.

### Section 3. Contract Amount.

A. In consideration of the faithful performance by the Contractor of the covenants in this Contract, and any County Project Authorizations issued hereunder, to the full satisfaction and acceptance of the County, the County agrees to pay, or cause to be paid, to Contractor the Contract Amount established in the County Project Authorization(s) awarding the Work as set forth in the Exhibits to this Agreement.

B. Measurement and payment provisions are provided in Division 1, Section 9 of the Standard Specifications attached hereto as Exhibit G.

### Section 4. Bonds.

A. For each County Project Authorization authorizing Work for a cost of \$200,000.00 or more, the Contractor shall procure Performance and Payment Bonds, in the form prescribed in Exhibit F, in conformance with this Agreement and the Solicitation. Contractor shall provide Performance and Payment Bonds in the amount of 100% of the Contract Amount, the costs of which are to be paid by Contractor. If the Contract Amount is increased by a County Project Modification, it shall be the Contractor's responsibility to ensure that the Performance and Payment Bonds are amended accordingly and a copy of the amendment recorded by the Lee County Clerk of Court and forwarded to the County. The Performance and Payment Bonds shall be underwritten by a Surety authorized to do business in the State of Florida and otherwise acceptable to the County; provided, however, the Surety shall be rated as "B or better" as to general policy holders rating as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc.

B. Attorneys-in-Fact who sign Bonds for County projects must file with such Bond a certified copy of their Power of Attorney to sign such Bond. All agents of Surety companies must list their name, address, and telephone number on all Bonds. The life of all Bonds provided to the County shall extend twelve (12) months beyond the date of final payment and shall contain a waiver of alternation to the terms of the Contract, extensions of time and/or forbearance on the part of the County. The Surety must have fulfilled all of its obligations on all other Bonds previously provided to the County. The Surety must have a minimum underwriting limitation of \$5,000,000 published in the latest edition of the Federal Register for Federal Bonds (U.S. Dept. of Treasury).

C. If the Surety for any Bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the Contractor

shall, within five (5) calendar days thereafter, substitute at Contractor's cost another Bond and Surety, both of which shall be subject to the County's approval.

D. If the Contractor cannot obtain another Bond and Surety within five (5) calendar days, the County may accept and the Contractor shall submit an irrevocable letter of credit drawn on a Lee County, Florida bank until the Bond and Surety can be obtained.

E. In case of default on the part of the Contractor, the County will charge against the Contract/Performance Bond all expenses for services incidental to ascertaining and collecting losses under the Contract/Performance Bond, including accounting, engineering, and legal services, together with any and all costs incurred in connection with renegotiation of the Contract.

F. The Surety shall indemnify and provide defense for the County when called upon to do so for all claims or suits against the County, by third parties, pertaining to Contractor payment or performance issues arising out of the Contract where the Contractor has failed to timely provide the County such defense. It is expressly understood that the monetary limitation on the extent of the indemnification shall be the approved Contract amount, which shall be the original Contract amount as may be modified by subsequent County Project Modifications.

G. The principal and Surety executing the Contract/Performance Bond shall be liable to the County in any civil action that might be instituted by the County or any officer of the County authorized in such cases, for triple any amount in money or property the County might lose, or be overcharged, or otherwise be defrauded of by any wrongful or criminal act of the Contractor, their agent or their employees.

#### Section 5. Contract Time and Liquidated Damages

A. Time is of the essence in the performance of the Work under this Agreement. The Commencement Date is established in the Notice to Proceed to be issued by the County, and the Contractor must begin the Work within the number of days specified by the Notice to Proceed. Written Notice to Proceed is contingent upon and will be done subsequent to the Contractor fully satisfying the County's stated insurance and Bond submittal requirements. No Work shall be performed at the Project Site prior to the Commencement Date. Any Work performed by the Contractor prior to the Commencement Date shall be at the sole risk of the Contractor. The County Project Authorization authorizing the Work shall establish the number of calendar days after the Commencement Date within which the Contractor must achieve Final Acceptance of the Work. That time period shall be the Contract Time. The date of Final Acceptance of the Work (or designated portions thereof) is the date certified by the Director pursuant to Exhibit G, Article 5-11.

B. Prosecution and progress of the Work provisions are provided in Division 1, Section 8 of the Standard Specifications attached hereto as Exhibit G.

C. The County and the Contractor recognize that, since time is of the essence for this Agreement, the County will suffer financial loss if Final Acceptance of the Work is not achieved within the time specified above, as said time may be adjusted as provided for herein. Should the Contractor fail to achieve Final Acceptance of the Work within the time period noted above, the County shall be entitled to assess the amount set forth in Article 8-10 of the Standard Specifications, as Liquidated Damages, but not as a penalty, for each calendar day thereafter until Final Acceptance is achieved. Final Acceptance of the Work shall be deemed to occur on the date the Director issues a written notice of Final Acceptance pursuant to the terms hereof. The Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted Liquidated Damages as a penalty, which the parties agree represents a fair and reasonable estimate of the County's actual damages at the time of contracting if the Contractor fails to achieve Final Acceptance of the Work in a timely manner.

D. When any period of time is referenced by days herein, it shall be computed to include the first day and last day of such period. All days shall mean calendar day and not business day.

E. Any agreed upon changes to the Contract Time must be accomplished by an approved, written County Project Modification in the form attached to this Agreement.

#### Section 6. Exhibits Incorporated.

The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement:

- A. Scope of Services
- B. Fee Schedule
- C. Legal Advertisement
- D. Invitation to Bid and all addenda, including the Project Plans
- E. Bid Form and Required Documents
- F. Public Construction Performance and Payment Bond
- G. Standard Specifications
- H. Insurance Requirements, including Certificates of Insurance
- I. Form of Release and Affidavit
- J. County Project Modification
- K. Supplemental Specifications
- L. Special Provisions
- M. Technical Special Provisions
- N. FDOT and Lee County Design Standards
- O. Developmental Specifications
- P. Contractor's Background Screening Affidavit
- Q. Other relevant forms

Section 7. Public Records.

A. In addition to other requirements provided herein, Contractor shall comply with public records laws embodied in Chapter 119, Florida Statutes, and specifically shall:

A.1. Keep and maintain public records required by the County in order to perform the Scope of Services identified herein.

A.2. Upon request from the County provide the County with any requested public records or allow the requested records to be inspected or copied within a reasonable time by the County.

A.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 Agreement term and thereafter if the Contractor does not transfer all records to the County.

A.4. Transfer, at no cost, to County all public records in possession of the Contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County, upon request from the County, in a format that is compatible with the information technology systems of the County. If the Contractor keeps and maintains public records upon the conclusion of this Agreement, the Contractor shall meet all applicable requirements for retaining public records that would apply to the County.

B. If Contractor does not comply with a public records request, the County shall treat that omission as a breach of this Agreement and enforce the Contract provisions accordingly. Additionally, if the Contractor fails to provide records when requested, the Contractor may be subject to penalties under Section 119.10, Florida Statutes, and reasonable costs of enforcement, including attorney fees.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, PRRCustodian@leegov.com; <http://www.leegov.com/publicrecords>.**

Section 8. Audit.

A. Upon execution of the Contract, the County reserves the right to conduct an audit of the Contractor's records pertaining to the Project. The County or its representatives may conduct an audit, or audits, at any time prior to final payment, or

thereafter pursuant to 5-12 of the Standard Specifications. The County may also require submittal of the records from either the Contractor or any subcontractor or material supplier. As the County deems necessary, records include all books of account, supporting documents, and papers pertaining to the cost of performance of the Work.

B. The Contractor must retain all records pertaining to the Contract for a period of not less than five (5) years from the date of the Director's final acceptance of the Project, unless a longer minimum period is otherwise specified. Upon request, make all such records available to the County or its representative(s). For the purpose of this section, records include but are not limited to all books of account, supporting documents, and papers that the County deems necessary to ensure compliance with the provisions of the Contract Documents.

C. If the Contractor fails to comply with these requirements, the County may disqualify or suspend the Contractor from bidding on or working as a subcontractor on future Contracts.

D. The Contractor must ensure that the subcontractors provide access to their records pertaining to the project upon request by the County.

#### Section 9. Indemnification and Insurance.

A. Contractor agrees to save harmless, indemnify, and defend or, at the option of the County, pay the cost of defense, the County and its representative from any and all claims, losses, penalties, demands, judgments, and costs of suit, including attorneys' fees and paralegals' fees, for any expense, damage or liability incurred by any of them, whether for personal injury, property damage, direct or consequential damages, or economic loss, arising directly or indirectly on account of or in connection with the Work performed by Contractor under this Agreement or by any person, firm or corporation to whom any portion of the Work is subcontracted by Contractor or resulting from the use by Contractor, or by any one for whom Contractor is legally liable, of any materials, tools, machinery or other property of the County. The County and Contractor agree the first \$100.00 of the Contract Amount paid by the County to Contractor shall be given as separate consideration for this indemnification, and any other indemnification of the County by Contractor provided for within the Contract Documents, the sufficiency of such separate consideration being acknowledged by Contractor by Contractor's execution of the Agreement. The Contractor's obligation under this provision shall not be limited in any way by the agreed upon Contract Amount as shown in this Contract or the Contractor's limit of, or lack of, sufficient insurance protection.

B. The Contractor guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against him or any subcontractor, in connection with the Contract. The Department's final acceptance and payment does not release the Contractor's bond until all such claims are paid or released.

C. Contractor shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in the Insurance Requirements attached to this Agreement. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies which are registered with the State of Florida. Prior to execution of the Agreement, Contractor shall provide the County with properly executed Certificates of Insurance to evidence Contractor's compliance with the insurance requirements of the Contract Documents. Said Certificates of Insurance shall be on forms approved by the County. The Certificates of Insurance shall be personally, manually signed by the authorized representatives of the insurance company/companies shown on the Certificates of Insurance, with proof that they are authorized representatives thereof. In addition, certified, true and exact copies of all insurance policies required hereunder shall be provided to the County, on a timely basis, when requested by the County.

D. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) calendar days prior written notice by registered or certified mail shall be given to the County of any cancellation, intent not to renew, or reduction in the policies or coverages, except in the application of the aggregate limits provisions. In the event of a reduction in the aggregate limit of any policy, Contractor shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.

E. To the extent multiple insurance coverage and/or County's self-insured retention may apply, any and all insurance coverage purchased by Contractor and its Subcontractors identifying the County as an additional named insured shall be primary. The acceptance by the County of any Certificate of Insurance does not constitute approval or agreement by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of the Contract Documents. No Work shall commence at the Project Site unless and until the required Certificates of Insurance are received by the County.

F. The Contractor will be fully responsible for all acts and omissions of his Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts they may be liable to the same extent that they are employed by him. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor and the County. The County may, upon request, furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to the Contractor on account of specific Work done.

G. Contractor shall require each of its Subcontractors to procure and maintain, until the completion of the Subcontractor's work, insurance of the types and to the limits specified in the Insurance Requirements attached to this Agreement, unless such insurance requirements for the Subcontractor are expressly waived in writing by the County. All liability insurance policies, other than professional liability, workers' compensation, employer's liability and business auto liability policies, obtained by Contractor to meet the requirements of the Contract Documents shall name the County



and Engineer of Record as additional insureds. If any insurance provided pursuant to the Contract Documents expires prior to the completion of the Work, renewal Certificates of Insurance and, if requested by the County, certified, true copies of the renewal policies, shall be furnished by Contractor within thirty (30) calendar days prior to the date of expiration.

H. Should at any time the Contractor not maintain the insurance coverages required herein, the County may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the Contractor for such coverages purchased. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the County to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

I. Contractor shall submit to Engineer of Record a copy of all accident reports arising out of any injuries to its employees or those of any firm or individual to whom it may have subcontracted a portion of the Work, or any personal injuries or property damages arising or alleged to have arisen on account of any Work by Contractor under the Contract Documents.

#### Section 10. Compliance with Laws and Regulations

A. Contractor agrees to comply, at its own expense, with all federal, state, and local Laws and Regulations, including federal, state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to the Project, including but not limited to those dealing with taxation, workers' compensation, equal employment and safety. If Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify the County and Engineer of Record in writing.

B. Legal Requirements and provisions concerning Laws and Regulations to be observed are provided in Division 1, Section 7 of the Standard Specifications attached hereto as Exhibit G.

#### Section 11. Warranty

A. Contractor shall obtain and assign to the County all express warranties given to Contractor or any Subcontractors by any materialmen supplying materials, equipment or fixtures to be incorporated into the Project.

B. Contractor warrants to the County that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Contractor further warrants to the County that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, Suppliers or processors except as otherwise

provided for in the Contract Documents. If, within one (1) year after Final Acceptance, any Work is found to be Defective or not in conformance with the Contract Documents, Contractor shall correct it promptly after receipt of written notice from the County. Contractor shall also be responsible for and pay for replacement or repair of adjacent materials or Work which may be damaged as a result of such replacement or repair. These warranties are in addition to those express or implied warranties to which the County is entitled as a matter of law.

C. The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for progress payment, whether incorporated in the Project or not, will be passed to the County prior to the next application for progress payment, free and clear of all liens, claims, security interest and encumbrances; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor or by any other person performing the Work at the site or furnishing materials and equipment for the Project subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

Section 12. Notices.

A. All notices required or made pursuant to this Agreement by the Contractor to the County shall be in writing and delivered by hand or by United States Postal Service, first class mail, postage pre-paid, return receipt requested, or by courier, addressed to the following:

Roger Desjarlais  
Lee County Manager  
P.O. Box 398  
Fort Myers, FL 33902

With copies addressed to each of the following:

[County Project Manager Name], Project Manager, P.O. Box 398, Fort Myers, FL 33902

[County Procurement Director Name], Procurement Management Director, P.O. Box 398, Fort Myers, FL 33902

[County DOT Director Name], Department of Transportation Director, P.O. Box 398, Fort Myers, FL 33902

B. All notices required or made pursuant to this Agreement by the County to Contractor shall be made in writing and shall be delivered by hand or by United States Postal Service, first class mail, postage pre-paid, return receipt requested, or by courier, addressed to the following:

[Corporate Name of Contractor]

Attention: [Name of person with their title to whose attention the notice should be sent]

[Address (including city, state and zip)]

Telephone: [Telephone Number] Fax: [Fax Number]

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

#### Section 13. Modification.

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

#### Section 14. Successors and Assigns.

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

#### Section 15. No Waiver.

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

#### Section 16. Federal Requirements

A. In the event this Project is funded in whole or in part from any granting agency or source, the specific terms, regulations and requirements governing the disbursement of those funds are incorporated by reference and made a part of the Contract Documents.

#### Section 17. Entire Agreement.

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

#### Section 18. Severability.

Solicitation No. INSERT NUMBER

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

[Remainder of this page left intentionally blank.]

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

WITNESS:

**CONTRACTOR:** [Contractor Name]

Signed By: \_\_\_\_\_

Signed By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**OWNER: LEE COUNTY**

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: \_\_\_\_\_  
CHAIR

DATE: \_\_\_\_\_

ATTEST:  
CLERK OF THE CIRCUIT COURT

BY: \_\_\_\_\_

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY:

BY: \_\_\_\_\_  
OFFICE OF THE COUNTY ATTORNEY

**EXHIBIT A**  
**SCOPE OF SERVICES**

Contractor shall provide (INSERT TYPE OF SERVICES) services in accordance with the Solicitation and County Project Authorizations issued under this Agreement, if any.

A. County Project Authorization

The term County Project Authorization refers to a written document executed by both parties under this Agreement setting forth and authorizing a limited number of services, tasks, or work for a specific project identified by the County. Such services, tasks, or work is consistent with and has previously been described by the Solicitation and this Agreement.

B. Award of County Project Authorizations

As provided by the Solicitation, individual projects may be awarded and authorized via County Project Authorization, to any of the firms approved by the Board of County Commissioners under that solicitation. Award shall be made as follows:

- Any project/task with a total cost of \$X.00 or less may be awarded to any firm holding a valid contract under this bid able to meet the required project schedule.
- Any project/task with a total cost of \$X.01, but less than \$Y.00 shall be quoted by a minimum of three (3) of the approved firms holding a valid contract under Solicitation No. (INSERT SOLICITATION NUMBER). If there are fewer than three (3) approved firms holding a valid contract under this Solicitation, then all of the firms shall quote the project/task. When quotes are requested, the Contractor's submittal shall be based on the unit prices provided by Exhibit B, or lower prices. The quote shall not list any prices that are higher. Award of the project shall be made to the firm holding a valid contract under the Solicitation, with the lowest quoted price, able to meet the required project schedule.

C. Changes to County Project Authorizations

A modification to a County Project Authorization may be authorized by a County Project Modification properly executed by both parties.

D. Additional Purchases

If the County requires the Contractor to perform additional services or provide additional product(s) related to this Agreement, then the Contractor shall be entitled to additional compensation based on the Fee Schedule as amended to the extent necessary to accommodate such additional work or product(s). The additional compensation shall be agreed upon before commencement of any additional services or provision of additional product(s) and shall be authorized by a County Project Modification to a County Project

**Commented [TN2]:** This language should be modified to match the award parameters established by the solicitation. Please see Contracts for assistance if needed.

Authorization. The County will not pay for any additional service, work performed or product provided before a properly executed County Project Modification.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Contractor, the Contractor will not be entitled to additional compensation.

E. Performance of Work under this Agreement

All work shall be provided and performed in accordance with the Specifications of the Solicitation and as further described in any County Project Authorizations issued under this Agreement.

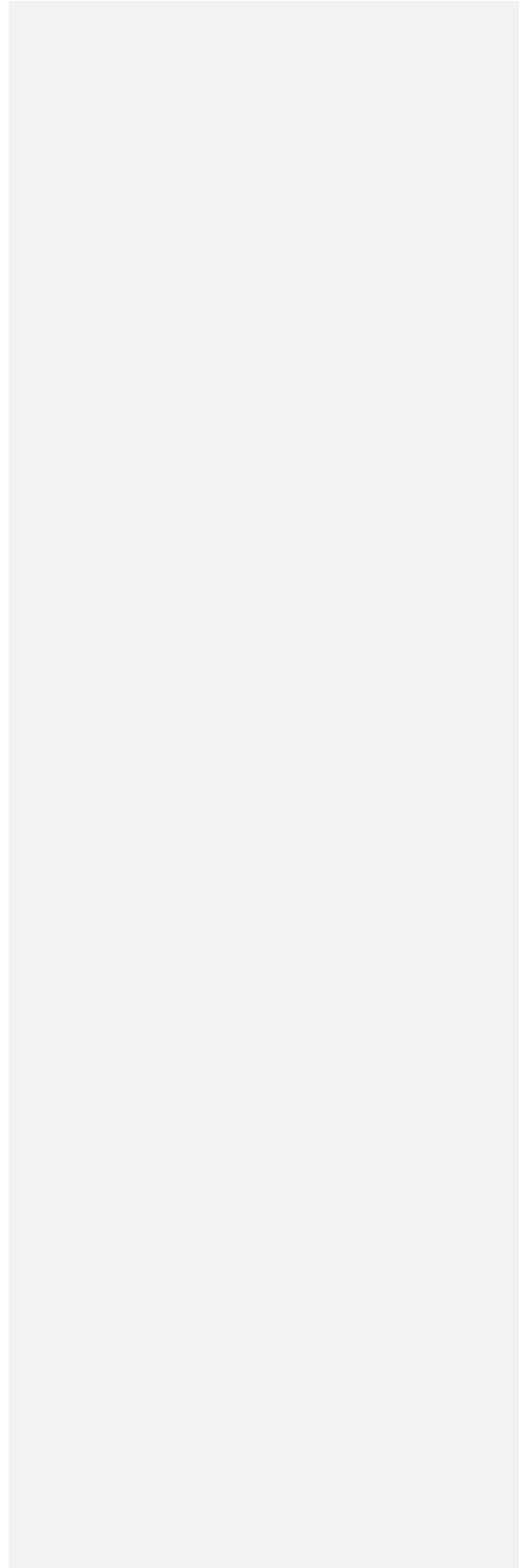
**EXHIBIT B**  
**FEE SCHEDULE**

Payment for actual Work completed shall be made in accordance with the terms of this Agreement and any County Project Authorizations issued hereunder. All project pricing shall be determined by the rates established by the Contractor's response to the Solicitation, attached hereto and incorporated herein as Exhibit E. All quotes received by the County from the Contractor shall reflect pricing at or below the rates listed in this Exhibit E.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Contractor, the Contractor will not be entitled to additional compensation.



**EXHIBIT C**  
**LEGAL ADVERTISEMENT**



**EXHIBIT D**  
**INVITATION TO BID**

[Include the entire bid package with all addenda, plans and drawings. Include the solicitation package **up to the label page**. Do not include the Draft Construction Agreement title page.]

**EXHIBIT E**  
**BID FORM AND REQUIRED DOCUMENTS**

[Include the Contractor's bid submission: the bid form and all the documents required by the solicitation.]

BOND NO. [Surety to enter bond #]

**EXHIBIT F**  
**PUBLIC CONSTRUCTION PERFORMANCE AND PAYMENT BOND**

By this bond, we [Name of Contractor], as **Principal**, and [Name of Surety], as **Surety**, are bound to **Lee County Board of County Commissioners**, a political subdivision of the State of Florida, herein called **Owner**, in the sum of [**Total Contract Price**], for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

**THE CONDITION OF THIS BOND IS** that is that if Principal:

1. Performs this contract dated \_\_\_\_\_, 20\_\_\_, between Principal and Owner for construction of improvements known as [**Name of Project**] located at [**Street Address or Legal Description**], under Lee County Solicitation No. [Solicitation number], the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05 (1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes do not affect Surety's obligation under this bond.

	<b>OWNER</b>	<b>PRINCIPAL</b>	<b>SURETY</b>
<b>NAME</b>	Lee County Board of County Commissioners	[Name of Contractor]	[Name of Surety]
<b>ADDRESS</b>	2115 Second St. Fort Myers, FL 33901	[Principal Business Address of Contractor]	[Principal Business Address of Surety]
<b>PHONE NUMBER</b>	239-533-2221	[Principal Business Phone of Contractor]	[Principal Business Phone of Surety]

\_\_\_\_\_  
[Name of Contractor]

DATED THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 2\_\_\_\_\_

By: \_\_\_\_\_  
[Printed Name and Title of Signer]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by [name of person acknowledging].

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public  
[Name of Notary Typed, Printed, or Stamped]

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced:

\_\_\_\_\_  
[Name of Surety]

DATED THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 2\_\_\_\_\_

By: \_\_\_\_\_  
[Printed Name] as Attorney in Fact

Address: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by [name of person acknowledging].

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public  
[Name of Notary Typed, Printed, or Stamped]

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced:

**EXHIBIT G**  
**STANDARD SPECIFICATIONS**

The Standard Specifications comprise Divisions I, II and III as noted below:

1. Division I General Requirements and Covenants, Sections 1-9 as included herein.
2. Division II-Construction Details and Division III-Materials refer to the **MONTH, YEAR** edition of the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, available at the following link:

<http://www.fdot.gov/programmanagement/Implemented/SpecBooks/>

**[NOTE: Attach the latest version of Lee County DOT's Division I General Requirements and Covenants]**

**EXHIBIT H  
INSURANCE REQUIREMENTS**

**CERTIFICATES OF INSURANCE**

(1) The Contractor shall obtain and maintain such insurance as will protect it from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of its employees including claims insured by usual personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; and (4) from claims for injury to or destruction of tangible property including loss of use resulting there from -- any or all of which claims may arise out of, or result from, the services, Work and operations carried out pursuant to and under the requirements of the Contract Documents, whether such services, Work and operations be by the Contractor, its employees, or by Subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

(2) This insurance shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.

(3) The Contractor shall require, and shall be responsible for ensuring throughout the time the Agreement is in effect, that any and all of its Subcontractors obtain and maintain until the completion of that Subcontractor's work, such of the insurance coverages described herein as are required by law to be provided on behalf of their employees and others.

(4) The Contractor shall obtain, have and maintain during the entire period of the Agreement insurance policies, which contain the following information and provisions:

- (A) The name and type of policy and coverages provided;
- (B) The amount or limit applicable to each coverage provided;
- (C) The date of expiration of coverage;
- (D) The designation of the County as an additional insured and a certificate holder (This requirement may be excepted for workers' compensation and professional liability Insurance);
- (E) The following clause must appear on the Certificate of Insurance:

Should any material change occur in any of the above described policies or should any of said policies be canceled before the expiration date thereof, the issuing company shall mail at least thirty (30) calendar days' written notice to the County.

(5) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the Work or termination of the Agreement, the Contractor shall furnish to the County, in triplicate, renewal or replacement Certificate(s) of Insurance not

later than thirty (30) calendar days prior to the date of their expiration. Failure of the Contractor to provide the County with such renewal certificate(s) shall be considered justification for the County to terminate the Agreement.

(6) Contractor shall include the County, the County's agents, officers and employees in the Contractor's General Liability and Automobile Liability policies as additional insureds.

(7) If the County has any objection to the coverage afforded by other provisions of the insurance required to be purchased and maintained by Contractor in accordance with the requirements of the Contract Documents on the basis of its not complying with the Contract Documents, the County shall notify Contractor in writing thereof within thirty (30) calendar days of the delivery of such certificates to the County. Contractor shall provide to the County such additional information with respect to its insurance as may be requested.

(8) The Contractor shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

[Insert the insurance requirements provided by Risk Management for this project.]



**EXHIBIT I**  
**RELEASE AND AFFIDAVIT**

COUNTY OF \_\_\_\_\_

STATE OF FLORIDA

Before me, the undersigned authority, personally appeared

\_\_\_\_\_,  
who after being duly sworn, deposes and says:

(1) In accordance with the Contract Documents and in consideration of \$ \_\_\_\_\_ paid, \_\_\_\_\_ ("Contractor") releases and waives for itself and its subcontractors, materialmen, successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort, against Lee County, Florida (the "County"), its Board of County Commissioners, employees and agents relating in any way to the performance of the Agreement between Contractor and the County, dated \_\_\_\_\_, \_\_\_\_\_, for the period from \_\_\_\_\_ to \_\_\_\_\_.

(2) Contractor certifies for itself and its subcontractors, materialmen, successors and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for which the County might be sued or for which a lien or a demand against any Payment Bond might be filed, have been fully satisfied and paid.

(3) Contractor agrees to indemnify, defend and save harmless the County, its Board of County Commissioners, employees and agents from all demands or suits, actions, claims of liens or other charges filed or asserted against the County arising out of the performance by Contractor of the Work covered by this Release and Affidavit.

(4) This Release and Affidavit is given in connection with Contractor's [monthly/final] application for payment No. \_\_\_\_\_.

CONTRACTOR:

\_\_\_\_\_  
By: \_\_\_\_\_ (signature of the executive officer)

Its: \_\_\_\_\_ (title of the executive officer)

Date: \_\_\_\_\_

Witnesses

\_\_\_\_\_

[Corporate Seal]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

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

My Commission Expires: \_\_\_\_\_  
(Signature of Notary)

Name: \_\_\_\_\_  
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of \_\_\_\_\_

Commission No.: \_\_\_\_\_

**EXHIBIT J  
COUNTY PROJECT MODIFICATION FORM**



County Project Modification (CPM) Form  
For Modifications to CPA

Modification Number: \_\_\_\_\_ to CPA Number: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Project Name: \_\_\_\_\_ Contractor's Name: \_\_\_\_\_

Contract Number:		Total Project Amount:	
Solicitation Number:		Account Number:	
Lee County Project Manager:		Project Number:	
Fiscal Staff:		Request Date:	

Upon the completion and execution of this Modification by both parties, the Contractor is authorized to and shall proceed to make the following changes in scope of work, compensation, and/or time of work set forth under the abovementioned County Project Authorization, and pursuant to the terms of the agreement executed on \_\_\_\_\_:

**Attachments:**

(List documents supporting change)

**Explanation of Change:**

Change in Project Price	Dollar Amount	Change in Project Time	Calendar Days
Original Project Price		Original Days to Substantial Completion from NTP	
Project Price Prior to this Modification		Original Days to Final Completion from NTP	
Net Increase (Decrease) of this Modification		Revised Days to Substantial Completion from NTP	
Project Price with All Approved Modifications		Revised Days to Final Completion from NTP	

\_\_\_\_\_  
Contractor Signature (Print & Sign Name)

\_\_\_\_\_  
Date Accepted

\_\_\_\_\_  
Contact E-mail Address

\_\_\_\_\_  
Contact Phone Number

\_\_\_\_\_  
Lee County Procurement Signature

\_\_\_\_\_  
Lee County Authorized Signature

\_\_\_\_\_  
Date Accepted

\_\_\_\_\_  
Date Accepted

Lee County Board of County Commissioners - Procurement Management  
1500 Monroe Street - Fort Myers, FL 33901  
PO Box 398 - Fort Myers, FL 33902-0398  
Phone: (239) 533-8881

Rev. 5/2018

**EXHIBIT K  
SUPPLEMENTAL SPECIFICATIONS**

**[NOTE: Supplemental Specifications are approved additions and revisions to Divisions II and III of the standard specifications. Standard LCDOT Supplemental Specifications may be found in the Contract Documents Template directory on the S:\ drive. Supplemental Specifications should be signed and sealed by the EOR. A signature box should be included to cover the EOR for all disciplines covered in the Supplemental Specifications.]**

**INDEX**

Division I-General Requirements and Covenants	K-2
Division II-Construction Details	K-2
1. Section 102-Maintenance of Traffic	K-2
2. Section 430-Pipe Culverts and Storm Sewers	K-3
Division III-Materials	K-3

*I hereby certify that these Supplemental Specifications have been properly prepared by me, or under my responsible charge:*

<b>Supplemental Specification Section(s):</b> 102, 430	
<b>Signature:</b>	
<b>Date:</b>	
<b>Engineer of Record:</b>	
<b>Florida License No.:</b>	
<b>Firm Name:</b>	
<b>Firm Address:</b>	
<b>City, State, Zip Code:</b>	
<b>Cert. of Authorization No:</b>	

## **DIVISION I-GENERAL REQUIREMENTS AND COVENANTS**

**NOTE: if none, mark "RESERVED"**

## **DIVISION II-CONSTRUCTION DETAILS**

### **SECTION 102 – MAINTENANCE OF TRAFFIC (LCDOT 10/27/2017)**

Article 102-4: Delete Article 102-4 in its entirety and substitute the following:

The Contractor shall submit a complete Traffic Control Plan (TCP) to the Engineer for review and approval at the preconstruction meeting. Prepare the TCP in conformance with and in the form prescribed in the current version of the FDOT Plans Preparation Manual, FDOT Design Standards – Index 600 series and the MUTCD. Indicate in the plan a TCP for each phase of activities. Take responsibility for identifying and assessing any potential impacts to a utility that may be caused by the TCP, and notify the Department in writing of any such potential impacts to utilities. The TCP shall be signed and sealed by a professional engineer duly registered in the State of Florida.

Engineer's approval of the TCP does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design or construction activities from those depicted in the original Contract Documents, and which effect a change in utility work different from that shown in the utility plans, joint project agreements, interlocal agreements or utility relocation schedules.

The County reserves the right to reject any Traffic Control Plan. Obtain the Engineer's written approval before beginning work using a TCP. The Engineer's written approval is required for all modifications to the TCP. The Engineer will only allow changes to the TCP without proper documentation on an emergency basis.

Pedestrian and/or bicycle traffic must be safely and continuously maintained through, or around, work zones on highway or streets where pedestrian and bicyclists were permitted at the start of the project. The Contractor shall submit a plan for approval signed and sealed by a professional engineer duly licensed in the State of Florida for the safe passage of pedestrian and bicycle traffic prior to closure of any existing pedestrian facility. Facilities constructed to specifically provide access for pedestrians in or around work zones must be consistent with the current PROWAG. The plan shall detail the rerouting of users, duration of closure and proposed construction methods for any temporary facility. Payment for this work shall be included in price bid for Pay Item 102-1a -Maintenance of Pedestrian and Bicycle Traffic.

All costs for maintenance of traffic including preparation of Traffic Control Plan shall be included in the price bids for Pay Item 102-1 – Maintenance of Traffic, except as expressly provided for in other pay items in the contract.

Subarticle 102-9.15: Delete Subarticle 102-9.15 in its entirety and substitute the following:

Temporary Traffic Detection Technology – Maintain all existing actuated or traffic responsive mode signal operations for main and side street movements for the duration of the contract and restore any loss of detection within 12 hours. Video detection shall be installed at the beginning of the project before any loss of detection has occurred. The contractor shall furnish, install and operate video detection using technology approved by Lee DOT Traffic Division and as listed in Lee DOT Traffic plans specifications posted on the county website at [http://www.lee-county.com/publicworks/pdf/traffic/DOT\\_Plan\\_Specifications.pdf](http://www.lee-county.com/publicworks/pdf/traffic/DOT_Plan_Specifications.pdf).

**SECTION 430 – PIPE CULVERTS AND STORM SEWERS (LCDOT 10/27/2017)**

Article 430-3: Articles 430-3.1 and 430-3.2 are modified as follows:

Pipe material for storm sewer or cross drain installations under pavement shall consist of steel reinforced concrete pipe in accordance with Section 449 and shall be a minimum of Class III or HE-III.

**DIVISION III-MATERIALS**

**NOTE: if none, mark "RESERVED"**

**EXHIBIT L**  
**SPECIAL PROVISIONS**

**[NOTE: Special Provisions are additions and revisions to the standard and supplemental specifications applicable only to this individual project, and generally deal with unique or specific commercial and/or general administrative issues. Special Provisions should NOT address technical subjects. Technical Subjects should be addressed in Technical Special Provisions]**

**1. CONTRACT TIME**

Contractor shall perform the contracted work fully, entirely, and in accordance with the Contract Documents within the Contract Time specified herein. If the Contractor fails to complete the work within the time stipulated, liquidated damages will apply in accordance with Standard Specification Article 8-10 Liquidated Damages for Failure to Complete the Work.

**Contract Time: Per Project CPA**

**2. PERMITS**

In accordance with Article 7-2 of Division I, permits and licenses procured by the County are listed below and attached hereto.

**[NOTE: LIST ALL APPLICABLE PERMITS BELOW AND ATTACH TO THIS EXHIBIT K]**

- a. Permit 1
- b. Permit 2
- c. Permit 3

**3. GEOTECHNICAL INFORMATION**

Certain subsurface explorations and/or testing were conducted by the County in the design of this Project. Reports summarizing this work are listed below and attached hereto. The attached information is NOT a part of the Contract Documents and is provided as a supplement for informational purposes only. The County is not responsible for the accuracy, completeness or usefulness thereof. The County makes no warranty, express or implied, for the data, interpretations or opinions contained therein. Any person or party that utilizes the attached information does so purely at its own risk, and the County disclaims any responsibility or liability for any user's reliance upon the information.

**[NOTE: LIST ALL DOCUMENTS BELOW AND ATTACH TO THIS EXHIBIT K]**

- a. Report 1
- b. Report 2
- c. Report 3

**EXHIBIT M**  
**TECHNICAL SPECIAL PROVISIONS**

**[NOTE: Technical Special Provisions are specifications of a true technical nature for work that is not addressed (or cannot be effectively modified) in Divisions II or III of the Standard Specifications. Technical Special Provisions should be signed and sealed by the EOR. A signature box should be included to cover the EOR for all disciplines covered in the Technical Special Provisions].**

**If none, mark the section "RESERVED"**

*I hereby certify that these Technical Special Provisions have been properly prepared by me, or under my responsible charge:*

Technical Special Provision Section(s): <b>XXX, XXX, XXX</b>	
Signature:	
Date:	
Engineer of Record:	
Florida License No.:	
Firm Name:	
Firm Address:	
City, State, Zip Code:	
Cert. of Authorization No:	



**EXHIBIT N**  
**FDOT AND LEE COUNTY DESIGN STANDARDS**

The following design standards are expressly agreed to be incorporated by reference and made a part of this Agreement:

1. Florida Department of Transportation **FY20??-??** Design Standards as published at the following link:

<http://www.fdot.gov/roadway/DesignStandards/Standards.shtm>

2. Lee County Department of Transportation Plan Specifications for Signal & Street Lighting, April 15, 2014 edition as published at the following link:

<http://www.leegov.com/dot/traffic/trafficstandard>

3. Lee County Utilities Design Manual, the latest edition as published at the following link:

<http://www.leegov.com/utilities/design-manual>

In the event of discrepancies between the Lee County and FDOT design standards, Lee County Standards shall govern.

**EXHIBIT O**  
**DEVELOPMENTAL SPECIFICATIONS**

**[NOTE: Developmental Specifications are specifications developed around a new process, procedure, or material with the prior knowledge that subsequent adjustments might be necessary prior to adoption for standard usage. These will rarely be used by Lee County DOT, and have been included to preserve connectivity with FDOT standards. A signature box should be included to cover the EOR for all disciplines covered in the Developmental Specifications.]**

**If none, mark the section "RESERVED"**

*I hereby certify that these Developmental Specifications have been properly prepared by me, or under my responsible charge:*

Developmental Specifications Section(s): <b>XXX, XXX, XXX</b>	
Signature:	
Date:	
Engineer of Record:	
Florida License No.:	
Firm Name:	
Firm Address:	
City, State, Zip Code:	
Cert. of Authorization No:	

**EXHIBIT P**  
**CONTRACTOR'S BACKGROUND SCREENING AFFIDAVIT**



**CONTRACTOR BACKGROUND  
SCREENING AFFIDAVIT**

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Contractor who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Contractor is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

**Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit.** I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Contractor will be solely responsible for complying with such legal requirements. Furthermore, the Contractor shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
Name/Title

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following type of identification: \_\_\_\_\_

Type of Identification

[Stamp/seal required]

\_\_\_\_\_  
Signature, Notary Public



**EXHIBIT Q**  
**OTHER RELEVANT FORMS**

