

## AGREEMENT (DRAFT)

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, by and between The City of Lake Wales hereinafter called "Owner", and \_\_\_\_\_ doing business as a corporation hereinafter call "Contractor", for the construction of sludge drying bed modifications including demolition, cleaning and filling of existing vault, two new sludge drying beds, concrete paving, and sewer pipe and connection as described in the Construction Documents and Specification Manual provided by Kimley-Horn and Associates, Inc.

**WITNESSETH:** That for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor will furnish all of the material, supplies, tools, equipment, labor and other services necessary for construction and completion of the work described in the Contract Documents and comply with the terms therein for the sum of \$ \_\_\_\_\_ as detailed in the Bid Schedule.
2. The Contractor will furnish a Performance and Payment Bond, in an amount equal to 100 percent (100%) of the Contract Price, and submit such Bond to the Owner within ten (10) calendar days from the date of the Notice of Award.
3. The Contractor will purchase and maintain such comprehensive general liability and other insurance such as required by the General and Supplementary Conditions and furnish Certificates of Insurance to the Owner within ten (10) calendar days from the date of the Notice of Award.
4. The Contractor will commence the work required by the Contract Documents within ten (10) calendar days after the date of the Notice to Proceed for the proposed work, and will achieve Substantial Completion (**operational**) within 120 calendar days. The date of Final Completion will be 30 days following the date of Substantial Completion. Unless the period for Substantial Completion is extended otherwise by the Contract Documents, the Contractor will be assessed liquidated damages in the amount of \$500 per calendar day past the date of Substantial Completion. In addition, for Final Completion, the Contractor will be assessed liquidated damages in the amount of \$500 per calendar day past the date of Final Completion.
5. The Owner will pay to the Contractor in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents.
6. Progress payments will be made in an amount equal to 90% (ninety percent) of the value of work completed, and may include 90% (ninety percent) of

the value of materials and equipment not incorporated into the work, but delivered and suitably stored, less, in each case, the aggregate of payments previously made. At the sole discretion of the Owner, monthly progress payments may be increased after 50% (fifty percent) of the work is completed to 95% (ninety-five percent) of the value of work completed and materials and equipment not incorporated but delivered and suitably stored (less the aggregate of previous payments) provided that:

- (a) Contractor is making satisfactory progress, and
- (b) There is no specific cause for greater withholding.

However, the Owner may subsequently resume retaining 10% (ten percent) of the value of work completed and materials delivered if, in sole determination of the Owner, the Contractor is not performing according to the Contract Documents or not complying with the current progress schedule.

7. The Contractor will provide the Owner with a list of all Sub-contractors and Suppliers used by the Contractor in performing the work covered by this Contract. The Contractor will be required to submit to the Owner appropriate partial Release of Lien from the appropriate Suppliers and Sub-contractors with each Application for Payment before payment is made by the Owner. Final payment will be paid to the Contractor when the Contractor and all Sub-contractors and Suppliers have provided the Owner with their final Release of Lien.

8. The term "Contract Documents" means and includes the following:

- A. Invitation For Bids
- B. Bid
- C. Bid Bond
- D. Agreement
- E. Performance and Payment Bond
- F. Certificate of Insurance
- G. General Conditions
- H. Special Provisions
- I. Notice Of Award
- J. Notice To Proceed
- K. Change Order Form
- L. Application For Payment Form
- M. Certificate of Substantial Completion
- N. Release of Lien Forms
- O. Drawings prepared by Kimley-Horn and Associates, Inc.

9. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
10. The Contractor agrees that all materials, techniques, methods and safety are exclusively the responsibility of the Contractor and not the Engineer or Owner.
11. Contractor agrees to immediately notify Owner if Contractor is adjudged as bankrupt or insolvent, or makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Contractor or for any of its property, or if Contractor files a petition or take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws.
12. The Contractor shall indemnify and save harmless The City of Lake Wales its officers, agents and employees from all suits, actions or claims of any character, name and description brought for, or on account of any injuries, deaths or damages received or sustained by any person, persons or property by or from the Contractor, his agents or employees, or by, or in consequence of, any neglect in safeguarding the work or through the use of unacceptable materials in the construction of the improvement, or by, or on account of, any act or omission, neglect, or misconduct of the Contractor, his agents or employees, or by, or on account of, any claims or amounts recovered for any infringement of patent, trademarks, or copyright or from any claims or amounts arising or recovered under the Workmen's Compensation Law or any other laws, by-laws, ordinances, order or other decree, and so much of the money due to Contractor under any virtue of his contract as shall be considered necessary to the Engineer, may be retained for use of the Owner, or in case of money is due, his Surety shall be held until such suit or lawsuits, action or actions, claim or claims, for injuries, deaths or damages, as aforesaid, shall have been settled and suitable evidence to that effect furnished to the Owner. The Contractor agrees to furnish insurance coverage in the type and amounts stipulated by the Specifications and Contract Documents.
13. The breach of any provision of this contract and those provisions stated more fully in the specifications for the Fire Sub Station located off of Chalet Suzanne Road in Lake Wales, Florida shall entitle Owner to collect damages against Contractor and if necessary, to seek injunctive relief against Contractor, and to collect costs and attorney's fees through all appeals.

14. Public Records. Contractor acknowledges that it is acting on behalf of a Public agency and that this Agreement is subject to the provisions of §119.0701, Florida Statutes, and that Contractor must comply with the public records laws of the State of Florida. Contractor shall:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements and not.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

IN WITNESS WHEREOF, the parties thereto have executed, or caused to be executed by their duly authorized officials, this Agreement in triplicate each of which shall be deemed an original on the date first above written.

OWNER:

\_\_\_\_\_

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
Please Type/Print

TITLE: \_\_\_\_\_

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

ATTEST:

\_\_\_\_\_

NAME: \_\_\_\_\_  
Please Type/Print

TITLE: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

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

NAME: \_\_\_\_\_

Please Type/Print

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

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

ATTEST:

\_\_\_\_\_

NAME: \_\_\_\_\_

Please Type/Print

TITLE: \_\_\_\_\_

END OF  
SECTION