

City of Marco Island Florida



CONTRACT #2023-029:

Public Infrastructure Construction Services

December 5, 2023

Titan Concrete & Utilities, Inc.
10060 Amberwood Rd., Ste 3
Fort Myers, FL 33913

AND

CITY OF MARCO ISLAND
50 Bald Eagle Drive
Marco Island, FL 34145
Phone: (239) 389-5000

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AGREEMENT FOR PUBLIC INFRASTRUCTURE CONSTRUCTION SERVICES

THIS AGREEMENT, made and entered into this 5th day of December 2023 (the "Effective Date"), by and between **Titan Concrete & Utilities, Inc.**, hereinafter called the "Contractor," and the City of Marco Island, Florida, a political subdivision of the State of Florida, Collier County, hereinafter called the "City."

WITNESSETH

WHEREAS, on September 24, 2023, the City issued Request for Qualifications 2023-029 for Public Infrastructure Construction Services on an as needed basis (the "RFQ"); and

WHEREAS, on December 4, 2023, City Council approved the ranking of the firms responding to the RFQ and authorized the execution of contracts, for a term of three years with one three-year renewal option, with the twelve qualified ranked firms; and

WHEREAS, the Contractor is one of the twelve ranked qualified firms referenced above and is willing and able to perform such public infrastructure construct services for the City on an as needed basis, pursuant to the basic terms and conditions set forth in this Agreement; and

WHEREAS, the Contractor has been selected for the following six categories:

- | | |
|---|--|
| 1. Concrete Construction | 6. Underground Utility Installation and Repair |
| 2. Drainage, Construction and Repair | 7. Treatment Plant Infrastructure |
| 5. Earthwork, Vegetation Removal, and Site Construction | 8. Debris removal and other services |

and

WHEREAS, the purpose of this Agreement is not to authorize any specific services, but to set forth certain terms and conditions, which shall apply when and if Contractor is chosen from the "library" of contractors resulting from a request to submit a bid on a public infrastructure project; and

WHEREAS, the City intends and the Contractor acknowledges that any future services pursuant to this Agreement shall be non-exclusive and performed on an as needed basis and at the sole discretion of City, with no guaranty as to any minimum amount of work to be performed by Contractor.

NOW THEREFORE, the City and Contractor, in consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which is acknowledged, agree as follows:

1. **CITY APPROVAL OF CONTRACTOR'S PROPOSAL**: The Contractor's proposal in response to the RFQ for Public Infrastructure Construction Services, dated 10/23/2023, has been approved for contract award.
2. **COMMENCEMENT**: This Agreement is effective as of the Effective Date for an initial three (3) years term, with a possibility of one (1) three (3) year renewal.
3. **SCOPE OF WORK**: Contractor agrees to provide public infrastructure construction services as outlined in the RFQ for specific projects as authorized from time to time by the City (the "Services").

The execution of this contract shall not be construed as a commitment to the Contractor that any work will be awarded. Contractor shall submit a quotation for each individual job when requested by the City. City's acceptance and approval of the quotation shall be signified by an issuance of a purchase order. Except in cases of an emergency, no work for any individual job shall commence without an approved purchase order.

In each quotation, the City reserves the right to specify the period of completion, the collection of liquidated damages in the event of late completion, and any other additional conditions as may be deemed necessary and agreed upon by the City and the Contractor.

4. **COMPENSATION:** The City shall compensate the Contractor for the satisfactory performance of the Services pursuant to a purchase order for a specific project. Contractor shall invoice the City, as negotiated. Each invoice shall, detail the contract price, payments made to date, percentage of completion of the assignment, project or phase, payment due this invoice, remaining balance due. Invoices shall itemize hours, hourly rate, or other unit agreed upon as measurement of payment during negotiations, if requested. If hourly, invoices shall identify the name and title of personnel who performed the work.

Any City department may utilize the Services offered under this Agreement, provided sufficient funds are included in its budget(s).

Work awarded under this Agreement will be for projects in which the estimated construction cost of each individual project does not exceed \$300,000. Jobs over \$200,000 will require posting of payment and performance bonds. Jobs over \$50,000 will require City Council approval.

5. **CONTRACTOR'S RESPONSIBILITIES:** The Contractor shall comply with all laws, ordinances and governmental rules, regulations and orders now or at any time during the term of this Agreement which as a matter of law are applicable to or which affect the procedures of the Contractor. The obligation of the Contractor to comply with governmental requirements is provided for the purpose of assuring proper safeguards for the protection of person and property. The Contractor shall exercise the same degree of care, skill and diligence in the performance of the services as is ordinarily provided by a professional contractor under similar circumstances. If at any time during the term of this Agreement, it is determined that the Contractor's work or Services are incorrect, defective or fail to conform to the Scope of Services, upon written notification from the City the Contractor shall immediately proceed to correct the work, re-perform services which fail to satisfy the foregoing standard of care as determined by the City, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including reimbursement to the City for any other services and expenses made necessary thereby, save and except any costs and expenses, which the City would have otherwise paid absent the Contractor's error or omission. The City's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, or by law, equity or otherwise. The Contractor's obligations under Section 5 shall survive termination of this Agreement.

6. **NOTICES:** Contractor's address of record:

Titan Concrete & Utilities, Inc.
Francisco Robles

10060 Amberwood Rd., Ste 3
Fort Myers, FL 33913
(239) 416-5986
Email: underground@Titantcuinc.com

City's address of record:

Angela Johenning, C.F.E, CPPB
Purchasing and Risk Manager
City of Marco Island
50 Bald Eagle Drive
Marco Island, Florida 34145
Phone: (239) 389-5000
Email: AJohenning@cityofmarcoisland.com

The Contractor and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

7. **NO PARTNERSHIP:** Nothing herein contained shall create, or be construed as creating, a partnership between the City and the Contractor. Moreover, nothing stated in this Agreement shall be interpreted to indicate in any way that the Contractor is an agent of the City of Marco Island.

8. **COMPLIANCE WITH LAWS:** Contractor agrees to comply with all laws, ordinances, rules, and regulations that are now or may become applicable to the Services covered by this Agreement, regardless of the applicable jurisdiction.

9. **PERMITS; LICENSES; TAXES:** In compliance with Section 218.80, F.S., all City permits necessary for the prosecution of the work shall be obtained by the Contractor. Payment of fees for all such permits issued by the City shall be processed internally by the City. All non-City permits necessary for the prosecution of the work shall be procured and paid for by the Contractor. The Contractor shall also be solely responsible for payment of any and all taxes levied on the Contractor. In addition, the Contractor shall comply with all rules, regulations and laws of the City of Marco Island, Collier County, the State of Florida, and the U.S. Government now in force or hereafter adopted. The Contractor further agrees to comply with all laws governing the responsibility of an employer with respect to persons directly or indirectly employed by the Contractor.

10. **NO IMPROPER USE:** The Contractor will not use, nor cause or permit any employee or subcontractor to use or occupy in any manner whatsoever, City or private facilities or properties for any improper, immoral or offensive purpose, or for any purpose in violation of any federal, state, county or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. In the event of such violation by the Contractor the City, or its authorized representative, shall deem such conduct on the part of the Contractor to be objectionable or improper. Accordingly, the City shall have the right to suspend this Agreement with Contractor in full or in part. Should the Contractor fail to correct any noted violation, conduct, or practice to the satisfaction of the City within twenty-four (24) hours after receiving notice of such violation, conduct, or practice, such suspension shall continue until the violation is cured. The Contractor further agrees not to commence operations during the suspension period until the

violation has been corrected to the satisfaction of the City. The City reserves the right to immediately terminate this Agreement for the foregoing actions or inactions by the Contractor.

11. DEFAULT.

11.1 An event of default shall mean a breach of this Agreement by Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to as a breach, an event of default shall include the following:

- a. Contractor has not performed Services on a timely basis;
- b. Contractor has refused or failed, except in the case for which an extension of time is provided, to supply enough properly skilled staff personnel;
- c. Contractor has become insolvent or has assigned the proceeds received for the benefit of Contractor's creditors, or Contractor has taken advantage of any insolvency statute or debtor/creditor law or, if Contractor's affairs have been put in the hands of a receiver;
- d. Contractor has failed to obtain the approval of City where required by this Agreement;
- e. Contractor has refused or failed, except in the case for which an applicable extension of time is provided, to provide the Services as defined in this agreement;
- f. Contractor's refusal of re-inspection will result in terminating the Agreement immediately. No future work will be awarded.

11.2 In the event Contractor fails to comply with the provisions of this Agreement, the City may declare Contractor in default, notify Contractor in writing, and give Contractor 15 calendar Days to cure the default. If Contractor fails to cure the default, compensation will be due only for any properly completed construction Services, minus any damages pursuant to Section 11.3. In the event payment has been made for such Services not completed, Contractor shall return these sums to the City within ten (10) days after notice that these sums are due. Nothing in this Section shall limit the City's right to terminate, at any time, pursuant to Section 12 below, and its right for damages under Section 11.3.

11.3 In the event of Default, Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a. Lost funding, and
- b. The difference between the cost associated with procuring services and the amount actually expended by the City, including procurement and administrative costs.

11.4 The City may take advantage of each and every remedy specifically existing at law or in equity. Each and every remedy shall be in addition to every other remedy specifically given or otherwise existing and may be exercised from time to time as often and in such order as may be deemed expedient by the City. The exercise or the beginning of the exercise of one remedy shall not be deemed to be a waiver of the right to exercise any other remedy. The City's rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to the City at law or in equity.

12. **TERMINATION:** Either party may terminate this Agreement upon thirty (30) days written notice to the other should such other party fail substantially to perform in accordance with the terms of this Agreement. Should the Contractor be deemed or found to have failed to perform services herein in a professional manner satisfactory to the City in accordance with standards of practice in the industry, and/or the terms and requirements of this Agreement, the City may terminate said Agreement immediately for cause. Moreover, the City may terminate this Agreement for convenience with a seven (7) day written notice to the Contractor. The City shall be the sole judge of non-performance or cause.

13. **NO DISCRIMINATION:** The Contractor agrees not to discriminate against or upon employees or subcontractors as to race, sex, color, creed or national origin.

14. **INSURANCE:** All entities wishing to perform work for the City of Marco Island will be required to comply with the following minimum insurance requirements.

☐ COMMERCIAL GENERAL LIABILITY LIMITS (MUST INCLUDE CONTRACTUAL LIABILITY)	\$ 2,000,000 AGGREGATE \$ 1,000,000 EACH OCCURRENCE \$ 1,000,000 PRODUCTS-OMP/OP \$ 1,000,000 PERS & ADV INJURY
☐ AUTOMOBILE LIABILITY	\$ 1,000,000 COMBINED SINGLE LIMIT (INCLUDE HIRED AND NON-OWNED LIABILITY)
☐ WORKER'S COMPENSATION	STATUTORY
☐ EMPLOYER'S LIABILITY	\$ 1,000,000 EACH ACCIDENT \$ 1,000,000 DISEASE-POLICY LIMIT \$ 1,000,000 DISEASE-EACH EMPLOYEE
☐ THE CITY OF MARCO ISLAND, FLORIDA MUST BE NAMED AS AN ADDITIONAL INSURED UNDER THE GENERAL LIABILITY POLICY. CONTRACTOR'S AND/OR SUBCONTRACTOR'S GENERAL LIABILITY SHALL BE ON A PRIMARY AND NON-CONTRIBUTORY BASIS.	

- (1) The City of Marco Island City Council shall be named as an Additional Insured and the policy shall be endorsed that such coverage shall be primary to any similar coverage carried by the City.
- (2) This policy shall include contractual liability coverage to contemplate the indemnity provisions of this agreement.
- (3) Contractor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Contractor shall provide the City with certificates of insurance meeting the required insurance provisions.
- (4) The City of Marco Island must be named as **"ADDITIONAL INSURED"** on the Insurance Certificate for Commercial General Liability.
- (5) The City of Marco Island shall be named as the Certificate Holder. NOTE: The "Certificate Holder" should read as follows:

The City of Marco Island
Attn: Risk Manager
50 Bald Eagle Drive

Marco Island, FL 34145

(6) Thirty (30) Days Cancellation Notice is required.

15. **INDEMNIFICATION:** The Contractor, in consideration of One Hundred Dollars (\$100), the receipt and sufficiency of which is accepted through the signing of this Agreement, shall indemnify, hold harmless, and defend the City of Marco Island and its agents and employees from all suits and actions, including attorney's fees, and all costs of litigation and judgments of any name and description arising out of or incidental to the performance of this Agreement or Work performed hereunder. This provision shall also apply to any claims brought against the City by any employee of the named Contractor, the Contractor's subcontractor or sub-subcontractor, or anyone directly or indirectly employed by any of them. The Contractor's obligation under this provision shall not be limited in any way by the agreed upon contract price as listed in Section 4 above, or the Contractor's limit of, or lack of, sufficient insurance protection. The first One Hundred Dollars (\$100) of money received on the contract price herein is considered as payment of this obligation by the City. Nothing in this Agreement shall be deemed or treated as a waiver by the City of any immunity to which it is entitled by law, including but not limited to the City's sovereign immunity as set forth in Section 768.28, Florida Statutes.

This section does not pertain to any incident arising from the sole negligence of the City of Marco Island.

16. **ADMINISTRATION OF AGREEMENT:** This Agreement shall be fully administered by the City Manager or his designee on behalf of the City. The Contractor shall only receive and act upon orders and directives issued by the City Manager, his designee, or the City's Purchasing and Risk Manager/Deputy City Clerk.

17. **COMPONENT PARTS OF THIS AGREEMENT:** This Agreement consists of this Agreement document, all the Exhibits as listed in the table of content, Contractor's proposal in response to RFQ #2023-029, Insurance Certificate(s), RFQ #2023-029, any addenda, any Quotation/Purchase Order made or issued pursuant to this Agreement, and any related plans or specifications for any such Quotation/Purchase Order. All of the foregoing documents are incorporated and made a part of this Agreement ("Contract Documents").

18. **OFFER EXTENDED TO OTHER ENTITIES:** The City of Marco Island encourages and agrees to the successful bidder/proposer extending the pricing, terms and conditions of this solicitation or resultant contract to other governmental entities at the discretion of the successful bidder/proposer.

19. **SUBJECT TO APPROPRIATION:** It is further understood and agreed by and between the parties herein that this Agreement is subject to the continuation of appropriation of funds by the City Council of the City of Marco Island.

20. **ACCESS TO RECORDS AND AUDIT CLAUSE:** All records, books, documents, papers and financial information (the "Records") that result from the Contractor providing services to the City under this Agreement shall be the property of the City. The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the

Contractor involving transactions related to this Agreement.

21. PUBLIC RECORDS: Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes.

Contractor shall 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, and following completion of the Agreement until the records are transferred to City. Upon request from City custodian of public records, Contractor shall provide 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 by Chapter 119, Florida Statutes, or as otherwise provided by law.

Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City.

Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of Contractor or keep and maintain public records required by City to perform the service. If Contractor transfers all public records to City upon completion of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of this Agreement, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically by Contractor shall be delivered to City, upon request from the City's Custodian of Records, in a format that is compatible with the City's information technology systems.

Any compensation due to Contractor shall be withheld until all records are received as provided herein.

Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by City.

Section 119.0701(2)(a), Florida Statutes

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Public Records:	JOAN TAYLOR, CITY CLERK
Mailing address:	50 Bald Eagle Drive, Marco Island, FL 34145
Telephone number:	239-389-5010
Email:	JTaylor@cityofmarcoisland.com

22. **ANTI-LOBBYING:** Contractor warrants that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for Contractor any fee, commission, percentage fee, gifts or any other considerations contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Owner shall have the right to cancel this Agreement without liability. This provision shall not apply to Contractor's retention of an attorney on a non-contingent fee basis for purposes of negotiating this Agreement.

23. **SEVERABILITY:** 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.

24. **GOVERNING LAW, JURISDICTION AND VENUE:** The Agreement shall be interpreted under, and its performance governed by, the laws of the State of Florida. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to, this Agreement. Venue for any action to enforce this Agreement shall be in Collier County, Florida.

25. **SAFETY, GOVERNMENTAL COMPLIANCE AND HAZARDOUS MATERIALS:** Contractor shall be responsible for safety of its operations and its employees and shall take all reasonable safety precautions with respect to its Work. Contractor in addition to its own standards shall comply with all safety policies and procedures initiated by Contractor for the Services, including Contractor's policy regarding drugs, alcohol and controlled substances, and shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property, including, but not limited to, the Federal Occupational Safety and Health Act (OSHA). Contractor shall immediately notify City of any injury to any of the Contractor's employees. Contractor shall require its personnel to attend any safety meetings the City might conduct and direct Contractor to attend.

Contractor agrees that in performing the Services, it will not create, use or dispose of any hazardous chemicals or substances in an unlawful or hazardous manner and shall be solely responsible for the lawful, proper and safe handling, storage and removal of all hazardous wastes, chemicals and substances which are introduced to the site, or removed from the site, by Contractor's operations. The term "hazardous wastes, chemicals or substances" shall mean those materials and substances prohibited, proscribed, or the use of which is controlled by any agency of the federal government or the applicable state or local agency having jurisdiction of such matters. In the event Contractor encounters material reasonably believed to be hazardous wastes, chemicals or substances, Contractor shall immediately stop work in the area affected and report such condition to City in writing. Contractor shall comply with all federal, state and local regulations dealing with the use, storage or disposal of all hazardous wastes, chemicals and substances. Contractor shall be responsible for any and all claims and damages resulting from its use, handling, storage, removal and disposal of such hazardous wastes, chemicals or substances from the Project, and will indemnify, defend and hold City harmless from any and all liability associated with such use, handling, storage, removal and disposal including all associated attorney's fees and costs and costs of all cleanup operations wherever and whenever required by any governmental authority or City.

26. **SCRUTINIZED COMPANIES:** Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on

the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

If this Agreement is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

27. **E-VERIFY:** Contractors providing service to the City are required to comply with all state and federal employment laws. This includes, but is not limited to, laws resulting from the Immigration and Reform and Control Act of 1986, wherein all employers are required to verify the identity and employment eligibility of all employees. The Department of Homeland Security, U.S. Citizenship and Immigration Services require employees and employers to complete Form I-9 and the employer must examine evidence of identity and employment eligibility within three business days of the date employment begins. Non-compliant Contractors will be subject to contract sanctions, up to and including contract termination.

28. **INDEPENDENT CONTRACTOR:** During the term of this Agreement, Contractor shall be an independent Contractor and not an employee of the City. Contractor is not an agent of, or authorized to transact business, enter into agreements, or otherwise make commitments on behalf of the City, unless expressly authorized in writing by the City Manager or his designee. Contractor shall perform the Services at the request of the City Manager or his designee. Nothing set forth in this Agreement shall be construed to create the relationship of employer and employee or principal and agent between the City and Contractor. Unless expressly provided for otherwise in this Agreement, Contractor shall not act or attempt to act or represent itself, directly or indirectly or by implication, as an employee of the City or in any manner assume or create, or attempt to assume or create, any obligation on behalf of or in the name of the City. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits of the City, nor any rights generally afforded City employees. Contractor further understands that Florida Worker's Compensation benefits available to employees of the City are not available to Contractor or to any employee or agent of the Contractor. Contractor shall be responsible for complying with Florida's Worker's Compensation laws. All employees and subcontractors of the Contractor shall be considered to be, at all times, the sole employees or Contractors of the Contractor, under its sole direction and not an employee, Contractor or agent of the City. Contractor is responsible for the payment of all required payroll taxes, whether federal, state, or local in nature, including, but not limited to income taxes, Social Security taxes, Federal

Unemployment Compensation taxes, and any other fees, charges, licenses, or payments required by law.

29. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon the Parties and their respective successors, heirs and assigns. The Parties agree that nothing contained herein shall authorize the assignment of this Agreement or the delegation of any duties hereunder by either Party, unless previously set out in this Agreement, without the prior written consent of the other party.

30. **HEADINGS:** The sections headings used in this Agreement are for reference and convenience only and shall not enter into the interpretation hereof.

31. **SURVIVAL OF TERMS:** Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement, which (a) the Parties have expressly agreed shall survive any such termination, or (b) remain to be performed and by their nature would be intended to be applicable following any such termination or expiration. Any liabilities which have accrued prior to termination pursuant to the insurance and/or indemnification obligations set forth below shall survive the termination of this Agreement.

32. **WAIVER:** No delay or omission by either Party hereto, in the exercise of any right or remedy hereunder, shall impair such right or remedy or be construed to be a waiver thereof. Any waiver of any such right or remedy by any Party must be in writing and signed by the Party against which such waiver is sought. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or any other covenant herein contained. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

33. **FORCE MAJEURE:** Non-performance of Contractor or the City shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, hurricane, flood, terrorism, governmental acts or orders or restrictions, or other similar reason where failure to ("Force Majeure"), provided that the non-conforming Party gives prompt notice of such conditions to the other Party and makes all reasonable efforts to perform.

34. **NO CONTINGENT FEES:** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

35. **BONDS:** When an individual construction project is in excess of \$200,000, the Contractor shall be required to provide Payment and Performance Bonds.

The Contractor shall furnish a Performance and Payment Bonds prior to commencing performance, for the full amount of the Work, which shall act as a security guaranteeing the performance of the Contractor's work and the payment by the Contractor to any other party (ies)

providing labor and/or materials in connection with each individual project performed by the Contractor. The bonds shall be furnished using the forms prescribed in Exhibit "A".

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, Contractor shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to Owner's approval.

36. **PAYMENTS:** Generally, the Contractor will be paid upon completion. However, for jobs in excess of thirty (30) days, the Contractor may indicate on its Quotation its wish to receive Progress Payments and after review by the Owner progress payments may be approved.

37. **PAYMENTS WITHHELD:** Owner may decline to approve any Application for Payment, or portions thereof, because of defective or incomplete work, outstanding punch list items, subsequently discovered evidence or subsequent inspections. The Owner may nullify the whole or any part of any approval for payment previously issued and Owner may withhold any payments otherwise due Contractor under this Agreement or any other agreement between Owner and Contractor, to such extent as may be necessary in the Owner's opinion to protect it from loss because of: (a) defective Work not remedied; (b) third party claims failed or reasonable evidence indicating probable filing of such claims; (c) failure of Contractor to make payment properly to subContractors or for labor, materials or equipment; (d) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount; (e) reasonable indication that the Work will not be completed within the Contract Time; (f) unsatisfactory prosecution of the Work by the Contractor; or (g) any other material breach of the Contract Documents.

If any conditions described above are not remedied or removed, Owner may, after three (3) days written notice, rectify the same at Contractor's expense. Owner also may offset against any sums due Contractor the amount of any liquidated or unliquidated obligations of Contractor to Owner, whether relating to or arising out of this Agreement or any other agreement between Contractor and Owner.

38. **SUBMITTALS AND SUBSTITUTIONS:** Any substitution of products/materials from specifications shall be approved in writing by Owner in advance.

39. **CLEANUP AND PROTECTIONS.** Contractor agrees to keep the Project Site clean at all times of debris, rubbish and waste materials arising out of the Work. At the completion of the Work, Contractor shall remove all debris, rubbish and waste materials from and about the Project Site, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Project Site clean and ready for occupancy by Owner.

Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Contractor from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Contractor to the condition equal to that existing at the time of Contractor's commencement of the Work.

40. **DEFECTIVE WORK:** Work not conforming to the requirements of the Contract Documents or any warranties made or assigned by Contractor to Owner shall be deemed defective Work. If required by the Owner, Contractor shall as directed, either correct all defective Work, whether or not fabricated, installed or completed, or if the defective Work has been rejected by the Owner, remove it from the site and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including, but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby, and shall hold Owner harmless for same.

If the Owner consider it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others, Contractor, at Project Manager's request, shall uncover, expose or otherwise make available for observation, inspection or tests as The Owner may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

If any portion of the Work is defective, or if Contractor fails to supply sufficient skilled workers, suitable materials or equipment or fails to finish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of Contractor or any other party.

Should Owner determine, at its sole opinion, it is in Owner's best interest to accept defective Work, Owner may do so. Contractor shall bear all direct, indirect and consequential costs attributable to Owner's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Amount. If Owner accepts such defective Work after final payment, Contractor shall promptly pay Owner an appropriate amount to adequately compensate Owner for its acceptance of the defective Work.

If Contractor fails, within a reasonable time after the written notice from the Owner, to correct defective Work or to remove and replace rejected defective Work as required by the Owner, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any of the provisions of the Contract Documents, Owner may, after seven (7) days written notice to Contractor, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, Owner may exclude Contractor from any or all of the Project Site, take possession of all or any part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Project Site and incorporate in the Work all materials and equipment stored at the Project Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner,

Design Professional and their respective representatives, agents, and employees such access to the Project Site as may be necessary to enable Owner to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of Owner in exercising such rights and remedies shall be charged against Contractor, and a Change Order shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

41. SUPERVISION AND SUPERINTENDENTS: Contractor shall plan, organize, supervise, schedule, monitor, direct and control the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents. Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without prior written notice to Project Manager except under extraordinary circumstances. The superintendent shall be employed by Contractor and be Contractor's representative at the Project Site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor. Owner shall have the right to direct Contractor to remove and replace its Project superintendent, with or without cause.

Contractor shall have a competent superintendent on the project at all times whenever Contractor's work crews, or work crews of other parties authorized by the Owner are engaged in any activity whatsoever associated with the Project. Should Contractor fail to comply with the above condition, the Owner shall, at his discretion, deduct from Contractor's monthly pay estimate, sufficient moneys to account for Owner's loss of adequate project supervision, not as a penalty, but as liquidated damages.

42. EMERGENCIES. In the event of an emergency affecting the safety or protection of persons or the Work or property at the Project Site or adjacent thereto, Contractor, without special instruction or authorization from Owner is obligated to act to prevent threatened damage, injury or loss. Contractor shall give the Owner written notice within forty-eight (48) hours after the occurrence of the emergency, if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Owner determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Contractor fails to provide the forty-eight- (48) hour written notice noted above, Contractor shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time.

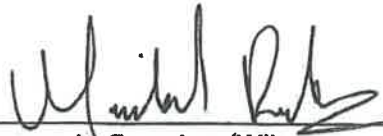
43. CHANGE ORDER AUTHORIZATION The City Manager shall have the authority on behalf of Owner to execute all change orders to the Agreement to the extent provided for under the Owner's Purchasing Policy and accompanying administrative procedures.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

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

ATTEST:

CONTRACTOR:
Titan Concrete & Utilities, Inc.


Corporate Secretary/Witness

Maribel Robles
2nd Witness (If Not Incorporated)

ITS: President

Date: 12.13.23

Francisco J. Robles

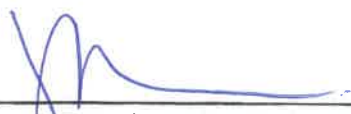
BY: 

President (If Incorporated)



ATTEST:

CITY:
CITY OF MARCO ISLAND, FLORIDA

BY: 
Joan Taylor, City Clerk

Date: 1/2/2024

BY: 
Michael A. McNees, City Manager

Approved as to form and legal sufficiency for the use and reliance of the City of Marco Island only.

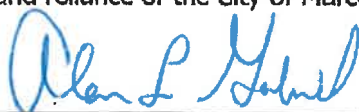
BY: 
Alan L. Gabriel, City Attorney

EXHIBIT A-1
PUBLIC PAYMENT BOND

Bond No. _____
Contract No. **2023-029**

KNOW ALL MEN BY THESE PRESENTS: **Titan Concrete & Utilities, Inc.** as Principal, and _____, as Surety, located at 10010 Amberwood Rd Ste 3, Fort Myers FL 33913 (Business Address) are held and firmly bound to **City of Marco Island**, as Obligee in the sum of _____ **dollars and cents (\$xxxxxxx.00)** for the payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the ____ Day of _____, 20__ with Obligee for _____ in accordance with drawings and specifications, which contract is incorporated by reference and made a part hereof and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

Promptly makes payment 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, then this bond is void; otherwise it remains in full force.

Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Sureties obligation under this Bond.

The provisions of this bond are subject to the time limitations of Section 255.05(2). In no event will the Surety be liable in the aggregate to claimants for more than the penal sum of this Payment Bond, regardless of the number of suits that may be filed by claimants.

IN WITNESS WHEREOF, the above parties have executed this instrument this 13th day of December, 2023, the name of each party being affixed, and these presents duly signed by its under-signed representative, pursuant to authority of its governing body.

Signed, sealed and delivered
in the presence of:

PRINCIPAL

Witness as to Principal

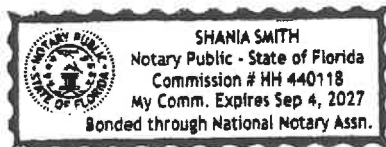
Titan Concrete & Utilities, Inc.

BY: Francisco J. Robles
NAME: FRANCISCO J. ROBLES
ITS: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 13th day of December, 2023, by _____ (name of officer or agent, title of officer or agent) of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ (type of identification) as identification.

My Commission Expires: 9.4.27



Shania Smith
(Signature of Notary)

NAME: Shania Smith
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of Florida
Commission No.: HH 440118

ATTEST:

SURETY:

(Printed Name)

(Business Address)

(Authorized Signature)

Witness to Surety

(Printed Name)

OR

Witness

As Attorney in Fact
(Attach Power of Attorney)

(Printed Name)

(Business Address)

(Telephone Number)

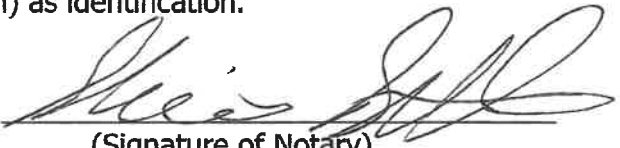
STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 20____, by _____ (name of officer or agent, title of officer or agent) of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ (type of identification) as identification.

My Commission Expires: 9.4.27



(AFFIX OFFICIAL SEAL)


(Signature of Notary)

NAME: Shania Smith
(Legibly Printed)

Notary Public, State of Florida
Commission No.: HH440118

EXHIBIT A-2**PUBLIC PERFORMANCE BOND**

Bond No. _____
Contract No. **2023-029**

KNOW ALL MEN BY THESE PRESENTS: **Titan Concrete & Utilities, Inc.** as Principal, and _____, as Surety, located at _____ (Business Address) are held and firmly bound to **City of Marco Island**, as Oblige in the sum of _____ dollars and _____ cents (\$xxxxxxx.00) for the payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the ____ day of _____, 20__ with Oblige for _____ in accordance with drawings and specifications, which contract is incorporated by reference and made a part hereof and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and
2. Pays Oblige any and all losses, damages, costs and attorneys' fees that Oblige sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, incurred by Oblige; and
3. 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 changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Sureties obligation under this Bond.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to therein shall in anywise affect its obligations under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to work or to the specifications.

This instrument shall be construed in all respects as a common law bond. It is expressly understood that the time provisions and statute of limitations under Section 255.05, Florida Statutes, shall not apply to this bond.

In no event will the Surety be liable in the aggregate to Oblige for more than the penal sum of this Performance Bond regardless of the number of suits that may be filed by Oblige.

IN WITNESS WHEREOF, the above parties have executed this instrument this 13th day of December, 2023, the name of each party being affixed, and these presents duly signed by its under-signed representative, pursuant to authority of its governing body.

Signed, sealed and delivered

in the presence of:

PRINCIPAL

Witness as to Principal

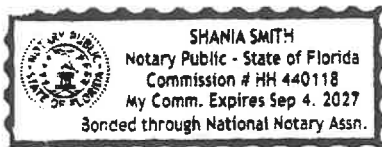
Titan Concrete & Utilities, Inc.BY: Francisco J RoblesNAME: Francisco J Robles

ITS: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this _____ day of _____, 20____, by _____ (name of officer or agent, title of officer or agent) of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ (type of identification) as identification.

My Commission Expires: 9.4.27

(AFFIX OFFICIAL SEAL)

A handwritten signature in cursive script, appearing to read "Shania Smith".
(Signature of Notary)NAME: Shania Smith
(Legibly Printed)Notary Public, State of Florida
Commission No.: HH 440118

ATTEST:

SURETY:

(Printed Name)_____
(Business Address)_____
(Authorized Signature)

Witness to Surety

(Printed Name)

OR

As Attorney in Fact
(Attach Power of Attorney)

Witness

(Printed Name)

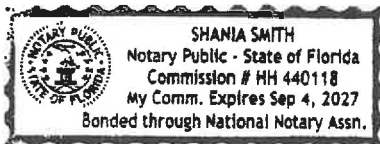
(Business Address)

(Telephone Number)

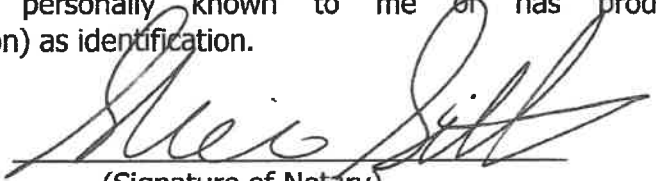
STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 20____, by _____ (name of officer or agent, title of officer or agent) of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ (type of identification) as identification.

My Commission Expires: 9.4.27



(AFFIX OFFICIAL SEAL)


(Signature of Notary)

NAME: Shania Smith
(Legibly Printed)

Notary Public, State of Florida
Commission No.:
HH 440118

JOBS AWARDED UNDER THIS CONTRACT MAY BE FUNDED BY FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) GRANTS. THEREFORE, CITY OF MARCO ISLAND AND ITS CONTRACTORS MUST FOLLOW CERTAIN FEMA GUIDELINES.

PUPOSE OF THE EXHIBITS B. THROUGH E. IS TO ENSURE THOSE GUIDELINES ARE KNOWN TO ALL THE PARTIES AND ARE ADHERED TO.

EXHIBIT B

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Per uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a contract (including a purchase order).

The Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with any and all other relevant Federal, State, and local laws, regulations, codes and ordinances:

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide, 2017 (in effect for incidents declared on or after April 1, 2017)

Reporting: The contractor will provide any information required to comply with the requirements and regulations pertaining to reporting. It is important that the contractor is aware of the reporting requirements of the City, as the Federal or State agencies may require the contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to be eligible for reimbursements.

Access to Records: All recipients, subrecipients, successors, transferees, and assignees, must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS/FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, Section 1225 of the Disaster Recovery Reform Act of 2018 prohibits FEMA from providing reimbursement to any state, local, tribal, or territorial government, or private non-profit for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.

The following access to records requirements apply to this contract:

- (1) The Contractor agrees to provide the City of Marco Island, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City of Marco Island and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Department of Homeland Security (DHS) Seal, Logo, and Flags: Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

No Obligation by Federal Government: The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from this contract.

Program Fraud and False or Fraudulent Statements or Related Acts: Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

Energy Efficiency Standards: The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Termination: Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other. Should the Contractor be deemed or found to have failed to perform services herein in a professional manner satisfactory to the City in accordance with standards of practice in the industry, and/or the terms and requirements of this Agreement, the City may terminate said Agreement immediately for cause. The City shall be the sole judge of non-performance or cause. Moreover, the City may terminate this Agreement for convenience with a seven (7) day written notice to the Contractor.

In the event that the City terminates this Agreement, Contractor's recovery against the City shall be limited to that portion of the Agreement Amount earned through the date of termination. The Contractor shall not be entitled to any other or further recovery against the City, including, but not limited to, any damages or any anticipated profit on portions of the services not performed.

Rights to Inventions Made Under a Contract or Agreement: If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the City wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the City must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Changes: Refer to Standard Contract/Purchase Order Terms and Conditions.

Procurement of Recovered Materials: A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. § 200.322.

i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Suspension and Debarment: Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by City of Marco Island. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to City of Marco Island, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C 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.

Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms §200.321:

(a) The Solicitor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible.

(b) Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Equal Employment Opportunity Clause (§60-1.4(b)): Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II(C).

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in

Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000):
Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the

employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Dept of Labor regulations (29 CFR Part 5).

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City of Marco Island shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Administrative, Contractual, or Legal Remedies (over \$250,000): Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

Clean Air Act and Federal Water Pollution Control Act: (over \$150,000) If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II(G).

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the City of Marco Island and understands and agrees that the City of Marco Island will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the City of Marco Island and understands and agrees that the City of Marco Island will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended) (over \$100,000): Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must also disclose any lobbying Federal award. Such disclosures are forwarded from tier to tier up to the Federal awarding agency.

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

No Obligation by Federal Government: FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements for Related Acts: Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

STATE PROVISIONS

Convicted Vendor and Discriminatory Vendors List: Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

Lobbying: No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or any state agency.

Inspector General Cooperation: The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

Record Retention: The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is made and shall allow the City, FDEM, or its designee's access to such records upon request.

Acknowledgement of Terms, Conditions, and Grant Clauses**CERTIFICATION**

If the vendor subcontracts any of the work required under this Agreement, a copy of the signed contract must be available to the Department for review and approval. The vendor agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Department and Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The recipient shall document in the quarterly report the subcontractor's progress in performing its work under this agreement. For each subcontract, the Recipient shall provide a written statement to the Department as to whether the subcontractor is a minority vendor as defined in Section 288.703, Fla. Stat.

On behalf of my firm, I acknowledge all grant requirements identified in this Exhibit B.

Francisco J. Robles
Signature of Contractor's Authorized Official

Francisco J. Robles / president
Name and Title of Contractor's Authorized Official

12.13.23
Date

EXHIBIT D
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION

Contractor Covered Transactions

1. The prospective subcontractor of the Sub-recipient, the City of Marco Island, certifies, by submission of this document, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

Contractor: **Titan Concrete & Utilities, Inc.**

Francisco J. Robles
Signature of Contractor's Authorized Official

Francisco J. Robles / president
Name and Title of Contractor's Authorized Official

12.13.23
Date

Sub-Recipient Name: **City of Marco Island**

EXHIBIT E
APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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, subgrants, 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.

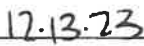
The Contractor, **Titan Concrete & Utilities, Inc.**, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official



Name and Title of Contractor's Authorized Official



Date