

**STATE OF FLORIDA
FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION**

CONTRACT No. 20057

This Contract No. 20057 (the "Contract") is by and between the FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION, whose address is 620 South Meridian Street, Tallahassee, Florida 32399-1600, hereafter "**Commission**," and State of Florida Department of Environmental Protection, FEID 59-6007353018, whose address is 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, hereinafter "**Department**", and City of Marco Island, a political subdivision of the State of Florida, FEID 59-3479845, whose address is 50 Bald Eagle Drive, Marco Island, 34145-3528, hereinafter "**City**", collectively, "Parties".

INTRODUCTORY CLAUSES

The Commission, Department, and City intend to partner together to accomplish Fruit Farm Creek Mangrove Restoration;

The Commission has awarded this Contract pursuant to the requirements of Sections 287.055 or 287.057, Florida Statutes; and

Such benefits are for the ultimate good of the State of Florida, its resources, wildlife, and public welfare.

TERMS OF THE CONTRACT

The Commission, the Department, and the City, for the considerations stated in this Contract, agree as follows:

1. PROJECT DESCRIPTION.

The City shall provide the services and products, and perform the specific responsibilities and obligations, as set forth in the Scope of Work, attached hereto as Attachment A and made a part hereof (hereafter, Scope of Work). The Scope of Work, Attachment A specifically identifies project tasks and accompanying deliverables. These deliverables must be submitted and approved by the Commission prior to any payment. The Commission will not accept any deliverable that does not comply with the specified required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

2. PERFORMANCE.

A. City Performance. The City shall perform the activities described in the Scope of Work, Attachment A in a proper and satisfactory manner. Unless otherwise provided for in the Scope of Work, Attachment A, any and all equipment, products or materials necessary or appropriate to perform under this Contract shall be supplied by the City. City or City's subcontractors shall obtain all necessary local, state, and federal authorizations necessary to complete this project, and the City or City's subcontractors shall be licensed as necessary to perform under this Contract as may be required by law, rule, or regulation; the City shall provide evidence of such compliance to the Commission upon request. The City shall procure all supplies and pay all charges, fees, taxes and incidentals that may be required for the completion of this Contract. By acceptance of this Contract, the City warrants that it has the capability in all respects to perform the requirements of this Contract, and has the

integrity and reliability that will assure good-faith performance as a responsible contractor. City shall immediately notify the Commission's Contract Manager in writing if its ability to perform under the Contract is compromised in any manner during the term of the Contract. The Commission shall take appropriate action, including potential termination of this Contract pursuant to paragraph ten (10) Remedies, below, in the event the City's ability to perform under this Contract becomes compromised.

- B. City Responsibilities.** The City agrees that all City employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, City shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Commission. The Commission may conduct, and City shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by City for this scope of work (on this project). The Commission in coordination with the City may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the Commission's security or other requirements. Such refusal shall not relieve City of its obligation to perform all work in compliance with the Contract. The Commission may reject and bar from any facility for cause any of City's employees, subcontractors, or agents.

- C. Department Responsibilities.** The Department agrees to provide access to the project site located on Department lands through access roads and corridors agreed upon by the Department and the Commission project manager for Commission staff and contractors to perform required surveys, conduct necessary monitoring and complete construction of the project. Access for Commission contractors will be required for vehicles, employees, and all equipment necessary to complete the project. The Department agrees to secure and maintain all land-owner appropriate permits for the project, maintain records of Department financial contributions to the project including staff time, other in-kind contributions, and direct expenses, and provide these records to the Commission upon request. The Department agrees to include recognition of the Commission and its National Oceanic and Atmospheric Administration partner in all presentations, outreach documents and reports developed for the project. The Department agrees to monitor all project enhancement areas for five (5) years post-construction and provide monitoring records to the Commission upon request. Monitoring and reporting will be conducted by the Department, or their agent, in accordance with United States Army Corps of Engineers permit requirements (Attachment D). Assistance for this monitoring may be provided by the Commission, as agreed upon in conjunction with the Department. The Department agrees to allow public access to the project site following construction and shall be responsible for meeting all permit conditions for the maintenance and management of the site in its restored condition in a manner consistent with the Rookery Bay National Estuarine Research Reserve Management Plan for the term of its lease of the property. The Department's performance and obligation to fund the activities specified in this paragraph is contingent upon an annual appropriation by the Legislature

- D. Commission Rights to Assign or Transfer.** City agrees that the State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Contract to another governmental agency in the State of Florida, upon giving prior written notice to City.

3. CONTRACT PERIOD.

- A. Contract Period and Limited Obligation Period.** This Contract shall begin upon execution by the Parties or April 19, 2021 (whichever is later) and end June 30, 2023, inclusive. The Commission shall not be obligated to pay for costs related to this Contract incurred prior to its beginning date or after its ending date.
- B. Renewal Period.** This Contract may be renewed for a period not to exceed the original term of the Contract.
- C. Extension.** Any extension of this contract as provided for in the Scope of Work, Attachment A shall be in writing for a period not to exceed six (6) months and shall be subject to the same terms and conditions set forth in the initial Contract. There shall be only one extension of this Contract unless the failure to meet the criteria set forth in the Contract for completion of the Contract is due to events beyond the control of the City.

4. COMPENSATION AND PAYMENTS.

- A. Compensation.** As consideration for the services rendered by the City under the terms of this Contract, the Commission shall pay the City on a cost reimbursement basis in an amount not to exceed \$2,300,000.00
- B. Payments.** The Commission shall pay the City for satisfactory performance of the tasks identified in the Scope of Work, Attachment A, as evidenced by the completed deliverables, upon submission of invoices, accompanied by supporting documentation sufficient to justify invoiced expenses or fees, and after acceptance of services and deliverables in writing by the Commission's Contract Manager, identified in paragraph eleven (11), below. Unless otherwise specified in the Scope of Work, Attachment A, invoices shall be due monthly, commencing from the start date of this Contract. Invoices must be legible and must clearly reflect the goods or services that were provided in accordance with the terms of the Contract for the invoice period. Unless otherwise specified in the Scope of Work, Attachment A, a final invoice shall be submitted to the Commission no later than forty-five (45) days following the expiration date of this Contract to assure the availability of funds for payment. Costs under this Contract must be obligated, and all work completed by the City by the end of the Contract period identified in paragraph three (3).
- C. Invoices.** Each invoice shall include the Commission Contract Number and the City's Federal Employer Identification (FEID) Number. Invoices, with supporting documentation, may be submitted electronically to the attention of the Commission's Contract Manager identified in Paragraph eleven (11) below. If submitting hard copies, an original and two (2) copies of the invoice, plus all supporting documentation, shall be submitted. All bills for amounts due under this Contract shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. City acknowledges that the Commission's Contract Manager may reject invoices lacking documentation necessary to justify invoiced expenses.
- D. Travel Expenses.** If authorized in the Scope of Work, Attachment A, travel expenses shall be reimbursed in accordance with Section 112.061, F.S.

- E. State Obligation to Pay.** The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature. The Parties hereto understand that this Contract and any renewal thereof is not a commitment to future appropriations but is subject to appropriation and authority to spend provided by the Legislature. The Commission shall be the final authority as to the availability of funds for this Contract, and as to what constitutes an "annual appropriation" of funds to complete this Contract. If such funds are not appropriated or available for the Contract purpose, such event will not constitute a default on behalf of the Commission or the State. The Commission's Contract Manager shall notify City in writing at the earliest possible time if funds are not appropriated or available.
- F. Non-Competitive Procurement and Rate of Payment.** Section 216.3475, F.S., requires that under non-competitive procurements, a contractor may not receive a rate of payment in excess of the competitive prevailing rate for those services unless expressly authorized in the General Appropriations Act. If applicable, the City warrants, by execution of this Contract, that the amount of non-competitive compensation provided in this Contract is in compliance with Section 216.3475, F.S.
- G. Professional Services – Truth-In-Negotiation Certificate.** If this Contract is for professional services and contains a lump-sum or a cost-plus-a-fixed-fee form of compensation which exceeds the threshold of Category Four (**\$195,000.00**) as provided in Section 287.017, F.S., then:
- a. The City must execute a Truth-in-Negotiations Certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting, pursuant to Section 287.055(5), F.S.
 - b. The original contract price and any additions will be adjusted to exclude any significant sums by which the Commission determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates. All such contract adjustments must be made within one (1) year following the end of this Contract.
- H. Time Limits for Payment of Invoices.** Payments shall be made in accordance with the Prompt Payment Act. Invoices returned to a vendor due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice is provided to the agency.
- I. Electronic Funds Transfer.** The City agrees to enroll in Electronic Funds Transfer (EFT), offered by the State's Chief Financial Officer, within thirty (30) days of the date the last Party has signed this Contract. Copies of the Authorization form and a sample blank enrollment letter can be found on the vendor instruction page at:

http://www.fldfs.com/aadir/direct_deposit_web/Vendors.htm

Questions should be directed to the State of Florida's EFT Section at (850) 413-5517. Once enrolled, invoice payments will be made by EFT.

- J. Vendor Ombudsman.** A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a State agency, may be contacted at (850) 413-5516 or by calling the Chief Financial Officer's Hotline, (800) 342-2762.

5. MYFLORIDAMARKETPLACE VENDOR REGISTRATION AND TRANSACTION FEE.

- A. MyFloridaMarketPlace.** In accordance with Rule 60A-1.033 of the Florida Administrative Code (F.A.C.), each vendor doing business with the State for the sale of commodities or contractual services as defined in Section 287.012, F.S., shall register in the MyFloridaMarketPlace system, unless exempted under Rule 60A-1.033(3), F.A.C. Information about the registration process is available, and registration may be completed, at the MyFloridaMarketPlace website (link under Business on the State portal at www.myflorida.com). Interested persons lacking Internet access may request assistance from the MyFloridaMarketPlace Customer Service at (866-352-3776) or from State Purchasing, 4050 Esplanade Way, Suite 300, Tallahassee, Florida 32399.
- B. Transaction Fee.** Pursuant to Section 287.057(22), F.S., all payments, unless exempt under Rule 60A-1.033(3), F.A.C., shall be assessed a Transaction Fee, which the Vendor shall pay to the State. For payments within the State accounting system (Florida Accounting Information Resource, FLAIR, or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Vendor. If automatic deduction is not possible, the Vendor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

6. RETURN OR RECOUPMENT OF FUNDS.

- A. Overpayments to City.** The City shall return to the Commission any overpayments due to unearned funds or funds disallowed pursuant to the terms of this Contract that were disbursed to the City by the Commission, upon written notification from the Commission of such overpayment. In the event that City or its independent auditor discovers that overpayment has been made, City shall repay said overpayment within forty (40) calendar days without prior notification from the Commission. In the event that the Commission first discovers an overpayment has been made, the Commission will notify the City in writing. Refunds should be sent to the Commission’s Contract Manager and made payable to the “The Florida Fish and Wildlife Conservation Commission.”
- B. Additional Costs or Monetary Loss Resulting from City Non-Compliance.** If the City’s non-compliance with any provision of the Contract results in additional cost or monetary loss to the Commission or the State of Florida to the extent allowed by Florida law, the Commission can recoup that cost or loss from monies owed to the City under this Contract or any other contract between the City and the Commission. In the event that the discovery of this cost or loss arises when no monies are available under this Contract or any other contract between the City and the Commission, City will repay such cost or loss in full to the Commission within thirty (30) days of the date of notice of the amount owed, unless the Commission agrees, in writing, to an alternative timeframe. If the City is unable to repay any cost or loss to the Commission, the Commission shall notify the State of Florida, Department of Financial Services, for resolution pursuant to Section 17.0415, F.S.

7. COMMISSION EXEMPT FROM TAXES, PROPERTY EXEMPT FROM LIEN.

The City recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Contract. City is placed on notice

that this exemption generally does not apply to other parties of this agreement, contractors, or subcontractors. Any questions regarding this tax exemption should be addressed to the Commission Contract Manager.

- A. If the Contract involves the improvement of real property titled to the State of Florida, then the following paragraph applies.

The City acknowledges that property being improved is titled to the State of Florida and is not subject to lien of any kind for any reason. The City shall include notice of such exemptions in any subcontracts and purchase orders issued hereunder.

8. MONITORING.

The Commission's Contract Manager shall actively monitor the City's performance and compliance with the terms of this Contract. The Commission reserves the right for any Commission staff to make scheduled or unscheduled, announced or unannounced monitoring visits. Specific monitoring terms, conditions, and schedules may be included in the Scope of Work, Attachment A.

9. TERMINATION.

- A. **Unilateral Termination.** The Parties may unilaterally terminate this Contract for convenience by providing the other Parties with thirty (30) calendar days of written notice of its intent to terminate. Neither Party shall be entitled to recover any cancellation charges or lost profits. The City shall be entitled to reimbursement for work performed under this Agreement and any non-cancellable obligations properly incurred prior to the date of termination.
- B. **Termination – Fraud or Willful Misconduct.** This Contract shall terminate immediately in the event of fraud or willful misconduct on the part of the City. In the event of such termination, the Commission shall provide the City with written notice of termination.
- C. **Termination - Funds Unavailability.** In the event funds to finance this Contract become unavailable or if federal or state funds upon which this Contract is dependent are withdrawn or redirected, the Commission may terminate this Contract upon no less than twenty-four (24) hours' notice in writing to the City. Said notice shall be delivered by certified mail, return receipt requested or in person with proof of delivery. The Commission shall be the final authority as to the availability of funds and will not reallocate funds appropriated for this Contract to another program thus causing "lack of funds." In the event of termination of this Contract under this provision, the City will be compensated for any work satisfactorily completed and any non-cancellable obligations properly incurred prior to notification of termination.
- D. **Termination – Other.** The Commission may terminate this Contract if the City fails to:
1.) comply with all terms and conditions of this Contract; 2.) produce each deliverable within the time specified by the Contract or extension; 3.) maintain adequate progress, thus endangering the performance of the Contract; or, 4.) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences for default. The rights and remedies of the Commission in this clause are in

addition to any other rights and remedies provided by law or under the Contract. City shall not be entitled to recover any cancellation charges or lost profits.

- E. **City Discontinuation of Activities upon Termination Notice.** Upon receipt of notice of termination, the City shall, unless the notice directs otherwise, immediately discontinue all activities authorized hereunder. Upon termination of this Contract, the City shall promptly render to the Commission all property belonging to the Commission. For the purposes of this section, property belonging to the Commission shall include, but shall not be limited to, all books and records kept on behalf of the Commission.

10. REMEDIES.

- A. **Financial Consequences.** In accordance with Section 287.058(1)(h), F.S., the Scope of Work, Attachment A contains clearly defined deliverables. If the City fails to produce each deliverable within the time frame specified by the Scope of Work, Attachment A the budget amount allocated for that deliverable will be deducted from the City's payment. The Commission shall apply any additional financial consequences identified in the Scope of Work, Attachment A.
- B. **Cumulative Remedies.** The rights and remedies of the Commission in this paragraph are in addition to any other rights and remedies provided by law or under the Contract.

11. NOTICES AND CORRESPONDENCE.

Any and all notices shall be delivered to the individuals identified below. In the event that any Party designates a different Contract Manager after the execution of this Contract, the Party will provide written notice of the name, address, zip code, telephone and fax numbers, and email address of the newest Contract Manager or individual authorized to receive notice on behalf of that Party to all other Parties as soon as possible, but not later than five (5) business days after the new Contract Manager has been named. A designation of a new Contract Manager shall not require a formal amendment to the Contract.

FOR THE COMMISSION:

Contract Manager
Kent Smith
Biological Administrator II
Bryant Building
620 South Meridian Street
Tallahassee, FL 32399
Telephone (850) 617-9504
Fax (850) 921-7793
Kent.Smith@MyFWC.com

FOR THE CITY:

Contract Manager
Timothy Pinter, P.E.
Public Works Director
City of Marco Island
50 Bald Eagle Dr.
Marco Island, Florida 34145
Telephone (239) 389-5000
Fax N/A
tpinter@cityofmarcoisland.com

FOR THE DEPARTMENT:

Contract Manager
Donna Pace
Operations Management Consultant
Rookery Bay National Estuarine Research
Reserve
300 Tower Road
Naples, FL 34113
Telephone (239) 530-5946
Fax N/A
Donna.Pace@FloridaDEP.gov

12. **AMENDMENT.**

- A. **Waiver or Modification.** No waiver or modification of this Contract or of any covenant, condition, or limitation herein contained shall be valid unless in writing and lawfully executed by all Parties.
- B. **Change Orders.** The Commission may, at any time, by written order, make a change to this Contract. Such changes are subject to the mutual agreement of all Parties as evidenced in writing. Any change which causes an increase or decrease in the City's cost or time shall require an Amendment. Minor changes, such as those updating a party's contact information, may be accomplished by a Modification.
- C. **Renegotiation upon Change in Law or Regulations.** The Parties agree to renegotiate this Contract if federal and/or state revisions of any applicable laws or regulations make changes in the Contract necessary.

13. **PROPERTY RIGHTS.**

- A. **Intellectual and Other Intangible Property.**
 - i. **City's Pre-existing Intellectual Property (Proprietary) Rights.** Unless specifically addressed otherwise in the Scope of Work, Attachment A, intellectual and other intangible property rights to the City's pre-existing property will remain with the City.
 - ii. **Proceeds Related to Intellectual Property Rights.** Proceeds derived from the sale, licensing, marketing or other authorization related to any intellectual and other intangible property right created or otherwise developed by the City under this Contract for the Commission shall be handled in the manner specified by applicable Florida State Statute and/or Federal program requirements.
 - iii. **Commission Intellectual Property Rights.** Where activities supported by this Contract produce original writing, sound recordings, pictorial reproductions, drawings or other graphic representation and works of any similar nature, the Commission and the State of Florida have the unlimited, royalty-free, nonexclusive, irrevocable right to use, duplicate and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others acting on behalf of the Commission to do so. If this Contract is supported by federal funds, the federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.

B. Purchase or Improvement of Real Property.

This agreement is for the purchase or improvement of real property, therefore the following terms and conditions apply.

- i. **Title.** If this Contract is supported by state funds, the City shall comply with Section 287.05805, F.S. This section requires the City to grant a security interest in the property to the State of Florida, the type and details of which are provided for in Attachment A, Scope of Work. Title to state-owned real property remains vested in the state.
- ii. **Use.** State-owned real property will be used as provided in Attachment A, Scope of Work.

C. Non-Expendable Property.

- i. **Non-Expendable Property Defined.** For the requirements of this section of the Contract, “non-expendable property” is the same as “property” as defined in Section 273.02, F.S. (equipment, fixtures, and other tangible personal property of a non-consumable and non-expendable nature, with a value or cost of **\$1,000.00** or more, and a normal expected life of one year or more; hardback-covered bound books that are circulated to students or the general public, with a value or cost of **\$25.00** or more; and uncirculated hardback-covered bound books, with a value or cost of **\$250.00** or more).
- ii. **Title to Non-Expendable Property.** Title (ownership) to all non-expendable property acquired with funds from this Contract shall be vested in the Commission and said property shall be transferred to the Commission upon completion or termination of the Contract unless otherwise authorized in writing by the Commission or unless otherwise specifically provided for in Attachment A, Scope of Work.

14. RELATIONSHIP OF THE PARTIES.

- A. Independent Contractor.** The City shall perform as an independent contractor and not as an agent, representative, or employee of the Commission. The City covenants that it presently has no interest and shall not acquire any interest that would conflict in any manner or degree with the performance of services required. Each party hereto covenants that there is no conflict of interest or any other prohibited relationship between the City, the Department and the Commission.
- B. City Training Qualifications.** The City agrees that all City employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, City shall furnish a copy of technical certification or other proof of qualification.
- C. Commission Security.** All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Commission. The Commission may conduct, and the City shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the City. The Commission may refuse access to, or require replacement of, any personnel

for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the Commission's other requirements. Such refusal shall not relieve the City of its obligation to perform all work in compliance with the Contract. The Commission in coordination with the City may reject and bar from any facility for cause any of City's employees, subcontractors, or agents.

- D. **Commission Rights to Assign or Transfer.** The City agrees that the State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Contract to another governmental agency in the State of Florida, upon giving prior written notice to the City.
- E. **Commission Rights to Undertake or Award Supplemental Contracts.** The City agrees that the Commission may undertake or award supplemental contracts for work related to the Contract. The City and its subcontractors shall cooperate with such other contractors and the Commission in all such cases.

15. **SUBCONTRACTS.**

- A. **Authority. Contractor is permitted to subcontract work under this Agreement, therefore, the following terms and conditions apply.** The City shall ensure, and provide assurances to the Commission upon request, that any subcontractor selected for work under this Contract has the necessary qualifications and abilities to perform in accordance with the terms and conditions of this Contract. The City must provide the Commission with the names of any subcontractor considered for work under this Contract; the Commission in coordination with the City reserves the right to reject any subcontractor. The City agrees to be responsible for all work performed and all expenses incurred with the project. Any subcontract arrangements must be evidenced by a written document available to the Commission upon request. The City further agrees that the Commission shall not be liable to the extent allowed by law, to any subcontractor for any expenses or liabilities incurred under the subcontract and the City shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.
- B. **City Procurement of Subcontractor.** As subrecipient of a Federal award the City shall use documented procurement procedures which reflect applicable State, local, and tribal laws and regulations. Pursuant to 2 C.F.R. §§200.318 through 200.326 any solicitation or subcontract by the City resulting from this contract shall include the state procurement terms and conditions contained in the provided General Terms and Conditions (Attachment E).
- C. **City Payment to Subcontractor.** If subcontracting is permitted pursuant to Paragraph A, above, the City agrees to make payments to the subcontractor upon completion of work and submitted invoice in accordance with the contract between the City and subcontractor.
- D. **Commission Right to Reject Subcontractor Employees.** The Commission in coordination with the City shall retain the right to reject any of the City's or subcontractor's employees whose qualifications or performance, in the Commission's judgment, are insufficient.
- E. **Subcontractor as Independent Contractor.** If subcontracting is permitted pursuant to Paragraph A above, the City agrees to take such actions as may be necessary to ensure that each subcontractor will be deemed to be an independent contractor and will not be

considered or permitted to be an agent, servant, joint venturer, or partner of the State of Florida.

16. MANDATORY DISCLOSURE.

These disclosures are required by State law, as indicated, and apply when this Contract includes State funding; and by Federal law, as indicated.

A. Disclosure of Interested State Employees. This Contract is subject to Chapter 112, F.S. City shall provide the name of any officer, director, employee, or other agent who is affiliated with this project and an employee of the State of Florida.

B. Convicted Vendors. City hereby certifies that neither it, nor any person or affiliate of City, has been convicted of a Public Entity Crime as defined in section 287.133, F.S., nor placed on the convicted vendor list. City shall have a continuing obligation to disclose, to the Commission, in writing, if it, its principals, recipient, subrecipient, contractor, or subcontractor, are on the convicted vendors list maintained by the Florida Department of Management Services pursuant to Section 287.133(3)(d), F.S.

i. Convicted Vendor List. Pursuant to Subsection 287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not be awarded or perform work as a Contractor, supplier, subcontractor or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. The State of Florida, Department of Management Services, Division of State Purchasing provides listings for convicted, suspended, discriminatory and federal excluded parties, as well as the vendor complaint list at:

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists

ii. Notice of Conviction of Public Entity Crime. Any person must notify the Department of Management Services and the Commission, in writing, within thirty (30) days after conviction of a public entity crime applicable to that person or an affiliate of that person as defined in Section 287.133, F.S.

C. Vendors on Scrutinized Companies List.

i. Scrutinized Companies. City certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, City agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the Commission may immediately terminate this Agreement for cause if the City, its affiliates, or its subcontractors are found to have submitted a false certification; or if the City, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if

federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

- D. Discriminatory Vendors.** City shall disclose to the Commission, in writing, if they, their contractor, or subcontractor, are on the Discriminatory Vendor List maintained by the Florida Department of Management Services pursuant to Section 287.134(3)(d), F.S. "An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 any public entity; and may not transact business with any public entity." Section 287.134(2)(a), F.S. City has a continuing duty to disclose to the Commission whether they appear on the discriminatory vendor list.
- E. Prompt Disclosure of Litigation, Investigations, Arbitration, or Administrative Proceedings.** Throughout the term of the Contract, the City has a continuing duty to promptly disclose to the Commission's Contract Manager, in writing, upon occurrence, all civil or criminal litigation, investigations, arbitration, or administrative proceedings (Proceedings) relating to or affecting the City's ability to perform under this contract. If the existence of such Proceeding causes the Commission concern that the City's ability or willingness to perform the Contract is jeopardized, the City may be required to provide the Commission with reasonable assurances to demonstrate that: a.) The City will be able to perform the Contract in accordance with its terms and conditions; and, b.) The City and/or its employees or agents have not and will not engage in conduct in performing services for the Commission which is similar in nature to the conduct alleged in such Proceeding.

17. INSURANCE.

The City warrants and represents that it is insured, or self-insured for liability insurance, in accordance with applicable state law and that such insurance or self-insurance offers protection applicable to the City's officers, employees, servants and agents while acting within the scope of their employment with the City.

18. SPONSORSHIP.

As required by Section 286.25, F.S., if the City is a nongovernmental organization which sponsors a program financed wholly or in part by state funds, including any funds obtained through this Contract, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (the City's name) and the State of Florida, Fish and Wildlife Conservation Commission." If the sponsorship reference is in written material, the words "State of Florida, Fish and Wildlife Conservation Commission" shall appear in the same size letters or type as the name of the City's organization. Additional sponsorship requirements may be specified in Attachment A, Scope of Work.

19. PUBLIC RECORDS.

- A.** This Contract may be unilaterally canceled by the Commission for refusal by the City to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the City in

conjunction with this Contract, unless exemption for such records is allowable under Florida law.

B. If the City meets the definition of “Contractor” in Section 119.0701(1)(a) F.S., the City shall comply with the following:

i. **IF THE CITY HAS QUESTIONS REGARDING THE APPLICATION OF THE CHAPTER 119, FLORIDA STATUTES, TO THE CITY’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 850-488-6553, RecordsCustodian@myfwc.com, and 620 South Meridian Street, Tallahassee FL 32399**

ii. Keep and maintain public records required by the Commission to perform the service.

iii. Upon request from the Commission’s custodian of public records, provide the Commission with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law.

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

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

20. COOPERATION WITH INSPECTOR GENERAL.

Pursuant to subsection 20.055(5), F.S., City, and any subcontractor to the City, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the City shall provide any type of information the Inspector General deems relevant to the City's integrity or responsibility. Such information may include, but shall not be limited to, the City's business or financial records, documents, or files of any type or form that refer to or relate to the Agreement. The City agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the City's compliance with the terms of this or any other agreement between the City and the State which results in the suspension or debarment of the City. Such costs shall include but shall not be limited

to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

21. SECURITY AND CONFIDENTIALITY.

The City shall not divulge to third Parties any clearly marked confidential information obtained by the City or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, unless required by law. To ensure confidentiality, the City shall take appropriate steps regarding its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

22. RECORD KEEPING REQUIREMENTS.

- A. City Responsibilities.** The City shall maintain accurate books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract, in accordance with generally accepted accounting principles.
- B. State Access to City Books, Documents, Papers, and Records.** The City shall allow the Commission, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or authorized representatives of the state or federal government to have access to any of City's books, documents, papers, and records, including electronic storage media, as they may relate to this Contract, for the purposes of conducting audits or examinations or making excerpts or transcriptions.
- C. City Records Retention.** Unless otherwise specified in the Scope of Work, these records shall be maintained for five (5) fiscal years following the close of this Contract, or the period required for this particular type of project by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>), whichever is longer. City shall cooperate with the Commission to facilitate the duplication and transfer of such records upon the Commission's request.
- D. City Responsibility to Include Records Requirements – Subcontractors.** In the event any work is subcontracted under this Contract, The City shall include the aforementioned audit and record keeping requirements in all subcontract agreements.
- E. Compliance with Federal Funding Accountability and Transparency.** Any federal funds awarded under this Contract must comply with the Federal Funding Accountability and Transparency Act (FFATA) of 2006. The intent of the FFATA is to empower every American with the ability to hold the government accountable for each spending decision. The result is to reduce wasteful spending in the government. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website: www.USASpending.gov. Grant recipients awarded a new Federal grant greater than or equal to **\$25,000.00** awarded on or after October 1, 2010 are subject to the FFATA. City agrees to provide the information necessary, over the life of this Contract, for the Commission to comply with this requirement

23. FEDERAL COMPLIANCE.

As applicable, City shall comply with all federal laws, rules, and regulations, including but not limited to:

- i. **Clean Air Act and Water Pollution Control Act.** All applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401-7671q), and the Water Pollution Control Act (33 U.S.C. 1251-1387, as amended).
- ii. **Lacey Act, 16 U.S.C 3371-3378.** This Act prohibits trade in wildlife, fish and plants that have been illegally taken, possessed, transported or sold.
- iii. **Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801-1884.** This Act governs marine fisheries in Federal waters.
- iv. **Migratory Bird Treaty Act, 16 U.S.C. 703-712.** The Act prohibits anyone, unless permitted, to pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry or cause to be carried by any means whatsoever, receive for shipment, transport of carriage, or export, at any time, or in any manner, any migratory bird, or any part, nest, or egg of such bird.
- v. **Endangered Species Act, 16 U.S.C. 1531, et seq.** The Act provides a program for the conservation of threatened and endangered plants and animals and the habitat in which they are found. The Act also prohibits any action that cause a “taking” of any listed species of endangered fish or wildlife. Also, generally prohibited are the import, export, interstate, and foreign commerce of listed species.

24. FEDERAL FUNDS. This Contract relies on federal funds, therefore, the following terms and conditions apply:

- A. Prior Approval to Expend Federal Funds to Federal Agency or Employee.** It is understood and agreed that the City is not authorized to expend any federal funds under this Contract to a federal agency or employee without the prior written approval of the awarding federal agency.
- B. Equal Employment Opportunity.** Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). Applicable, except as otherwise provide under 41 CFR Part 60, to any grant, contract, loan, insurance, or guarantee involving Federal assisted construction.
- C. Davis-Bacon Act.** The Davis-Bacon Act, 40 U.S.C. 3141-3148, as supplemented by Department of Labor regulations at 29 CFR Part 5. Applicable to contractors and subcontractors performing on federally funded or assisted contracts in excess of **\$2,000.00** for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Under this Act, contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.
- D. Copeland “Anti-Kickback Act.** The Copeland “Anti-Kickback” Act, 40 U.S.C. 3141-3148, and 3146-3148, as supplemented by Department of Labor regulations (29 CFR Part 5). Applicable to contracts awarded by a non-Federal entity in excess of **\$100,000.00** that involve employment of mechanics or labors. Under this Act, contractors and subrecipients are prohibited from inducing, by any mean, any person employed in the construction, completion,

or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

- E. **Contract Work Hours and Safety Standards Act** Sections 103 and 107 of the Agreement Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). Applicable to construction contracts awarded by Contractors and subcontractors in excess of **\$2,000.00**, and in excess of **\$2,500.00** for other contracts which involve the employment of mechanics or laborers. Under this Act, contractors and subcontractors must compute wages of mechanics and laborers (workers) on the basis of a standard forty (40) hour work week; provide workers no less than time and a half for hours worked in excess of the forty (40) hour work week; and not require workers to work in surroundings or work conditions that are unsanitary, hazardous, or dangerous.
- F. **Rights to Inventions Made Under a Contract or Agreement.** 37 CFR 401. If the Federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the recipient or Subrecipient 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 the “funding agreement,” the recipient or subrecipient 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.
- G. **Energy Efficiency.** 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 (Pub. L. 94–163, 89 Stat. 871).
- H. **Debarment and Suspension City Federal Certification.** In accordance with Federal Executive Order 12549 and 2 CFR Part 1400 regarding Debarment and Suspension, the City certifies that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency; and, that the City shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction.
- I. **Prohibition against Lobbying.**
 - i. **City Certification – Payments to Influence.** The City certifies that no Federal appropriated funds have been paid or will be paid, on or after December 22, 1989, by or on behalf of the City, 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, renewal, amending or modifying of any Federal contract, grant, or cooperative agreement. The City also certifies that they have not engaged any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of the City with respect to this Contract and its related federal contract, grant, loan, or cooperative agreement; or, if the City has engaged any registrant with respect to this Contract and its related Federal contract, grant, loan, or cooperative agreement, the City shall, prior to or upon execution of this Contract, provide the Commission Contract Manager a signed declaration listing the name of any said registrant. During the term of this Contract, and at the end of each Calendar quarter in which any event

occurs that materially affects the accuracy of this certification or declaration, the City shall file an updated declaration with the Commission's Contract Manager. If any non-federal funds are used for lobbying activities as described above in connection with this Contract, the City shall submit Standard Form-LLL, "Disclosure Form to Report Lobbying", and shall file quarterly updates of any material changes. The City shall require the language of this certification to be included in all subcontracts, and all subcontractors shall certify and disclose accordingly.

- ii. **City – Refrain from Subcontracting with Certain Organizations.** Pursuant to the Lobbying Disclosure Act of 1995, the City agrees to refrain from entering into any subcontracts under this Contract with any organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, unless such organization warrants that it does not, and will not, engage in lobbying activities prohibited by the Act as a special condition of the subcontract.

J. Compliance with Office of Management and Budget Circulars. As applicable, City shall comply with the following Office of Management and Budget (OMB) Uniform Guidance (2 CFR 200).

K. Drug Free Workplace. Pursuant to the Drug-Free Workplace Act of 1988, the City attests and certifies that the contractor will provide a drug-free workplace compliant with 41 U.S.C. 81.

25. CONTRACT-RELATED PROCUREMENT.

A. PRIDE. In accordance with Section 946.515(6), F.S., if a product or service required for the performance of this Contract is certified by or is available from Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) and has been approved in accordance with Subsection 946.515(2), F.S., the following statement applies:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this contract shall be purchased from [PRIDE] in the same manner and under the same procedures set forth in Subsections 946.515(2) and (4), F.S.; and for purposes of this contract the person, firm or other business entity carrying out the provisions of this contract shall be deemed to be substituted for this agency insofar as dealings with such corporation are concerned.

The above clause is not applicable to subcontractors unless otherwise required by law. Additional information about PRIDE and the products it offers is available at <http://www.pride-enterprises.org>.

B. Respect of Florida. In accordance with Subsection 413.036(3), F.S., if a product or service required for the performance of this Contract is on the procurement list established pursuant to Subsection 413.035(2), F.S., the following statement applies:

It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the blind or for the severely

handicapped that is qualified pursuant to Chapter 413, F.S., in the same manner and under the same procedures set forth in Subsections 413.036(1) and (2), F.S.; and for purposes of this contract, the person, firm or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the state agency insofar as dealings with such qualified nonprofit agency are concerned.

Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

- C. **Procurement of Recycled Products or Materials.** The City agrees to procure any recycled products or materials which are the subject of or are required to carry out this Contract in accordance with Section 403.7065, F.S.

26. PROFESSIONAL SERVICES.

- A. **Architectural, Engineering, Landscape Architectural, or Survey and Mapping.** If this Contract is for the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services, and is therefore subject to Section 287.055, F.S., the following provision applies:

The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this contract and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this contract.

- B. **Termination for Breach.** For the breach or violation of this provision, the Commission shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the Contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

27. INDEMNIFICATION.

Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party, its officers, employees and agents. Nothing in this Agreement shall be construed or interpreted as denying to any party any remedy or defense available under the laws of the state of Florida, nor as a waiver of sovereign immunity of the state of Florida beyond the waiver provided for in section 768.28, F.S. as amended.

28. NON-DISCRIMINATION.

No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Contract.

29. SEVERABILITY, CHOICE OF LAW, AND CHOICE OF VENUE.

This Contract has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract. Any action in connection herewith, in law or equity, shall be brought in Leon County, Florida, to the exclusion of all other lawful venues.

30. NO THIRD-PARTY RIGHTS.

The Parties hereto do not intend, nor shall this Contract be construed to grant any rights, privileges or interest to any person not a party to this Contract.

31. JURY TRIAL WAIVER.

As part of the consideration for this Contract, the Parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Contract, or with the products or services provided under this Contract, including but not limited to any claim by the City of *quantum meruit*.

32. PROHIBITION OF UNAUTHORIZED ALIENS.

In accordance with Federal Executive Order 96-236, the Commission shall consider the employment by the City of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Contract if the City knowingly employs unauthorized aliens.

33. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY).

A. Requirement to Use E-Verify. Executive Order 11-116, signed May 27, 2011, by the Governor of Florida, requires Commission contracts in excess of nominal value to expressly require the City to: 1.) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by City during the Contract term; and, 2.) include in all subcontracts under this Contract, the requirement that subcontractors performing work or providing services pursuant to this Contract utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the subcontract.

B. E-Verify Online. E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States after the effective date of the required Memorandum of Understanding (MOU); the responsibilities and elections of federal contractors, however, may vary, as stated in Article II.D.1.c. of the MOU. There is no charge to employers to use E-Verify. The Department of Homeland Security's E-Verify system can be found online at http://www.dhs.gov/files/programs/gc_1185221678150.shtm

- C. **Enrollment in E-Verify.** If the City does not have an E-Verify MOU in effect, the City must enroll in the E-Verify system prior to hiring any new employee after the effective date of this Contract.
- D. **E-Verify Recordkeeping.** The City further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the Commission or other authorized state entity consistent with the terms of the City's enrollment in the program. This includes maintaining a copy of proof of the City's and subcontractors' enrollment in the E-Verify Program (which can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).
- E. **Employment Eligibility Verification.** Compliance with the terms of the Employment Eligibility Verification provision is made an express condition of this Contract and the Commission may treat a failure to comply as a material breach of the Contract.

34. FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE.

No Party shall be liable to the other for any delay or failure to perform under this Contract if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, pandemic, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Contract. If the delay is excusable under this paragraph, the delay will not result in any additional charge or cost under the Contract to any Party. In the case of any delay the City believes is excusable under this paragraph, City shall notify the Commission's Contract Manager in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if City could reasonably foresee that a delay could occur as a result; or (2) within five (5) calendar days after the date City first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. The Commission, in its sole discretion, will determine if the delay is excusable under this paragraph and will notify the City of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against the Commission. The City shall not be entitled to an increase in the Contract price or payment of any kind from the Commission for direct, indirect, consequential, impact, or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, the City shall perform at no increased cost, unless the Commission determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the Commission or the State, in which case, the Commission terminate the Contract in whole or in part.

35. ENTIRE CONTRACT.

This Contract with all incorporated attachments and exhibits represents the entire Contract of the Parties. Any alterations, variations, changes, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, and duly signed by each of the Parties hereto, unless otherwise provided herein. In the event of conflict, the following order

of precedence shall prevail; this contract and its attachments, the terms of the solicitation and the City's response to the solicitation.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK
SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed through their duly authorized signatories on the day and year last written below.

**CITY OF MARCO ISLAND, A
POLITICAL SUBDIVISION OF
THE STATE OF FLORIDA**

Signature

Name: _____

Title: _____

Date: _____

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK
ADDITIONAL SIGNATURE PAGE TO FOLLOW**

**STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION**

Signature

Name: _____

Title: _____

Date: _____

**FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION**

Signature

Name: _____

Title: _____

Date: _____

Approved as to form and legality by:

Commission Attorney

Attachments in this Contract include the following:

- Attachment A Scope of Work
- Attachment B Project Location
- Attachment C Construction Plans
- Attachment D Permits
- Attachment E General Terms and Conditions

Attachment A – SCOPE OF WORK

Project Name:	Fruit Farm Creek Mangrove Restoration	FWC Contract No.	20057
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1. DESCRIPTION OF GOODS / SERVICES PROCURED, OR PROJECT WORKPLAN

A. DESCRIPTION OF GOOD/SERVICES

i. Purpose: The Florida Fish and Wildlife Conservation Commission (“COMMISSION”) is entering into a cooperative agreement with the State of Florida Department of Environmental Protection (“DEPARTMENT”) and the City of Marco Island, a political subdivision of the State of Florida (“CITY”) to implement a project to improve the habitat, ecology and water quality in Rookery Bay National Estuarine Research Reserve in Collier County, Florida.

ii. Work to be Performed: The CITY, or their subcontractor, will install culverts below San Marco Road thereby restoring hydrologic connections to tidal mangrove wetlands at the Fruit Farm Creek restoration site and providing ecological enhancement of Rookery Bay National Estuarine Research Reserve (Attachment B).

iii. Program Goals and Objectives: This project will provide direct fish and wildlife habitat benefits with improved hydrological function of Rookery Bay National Estuarine Research Reserve. This project directly relates to the COMMISSION’s Strategic Plan initiatives for landscape conservation and marine fish habitat.

B. BACKGROUND: The goal of this project is to achieve habitat restoration through ecological enhancement and hydrological flow improvements. The project is located within the Rookery Bay National Estuarine Research Reserve, Outstanding Florida Waters, and is supported by the Reserve’s Management Plan for providing benefits to habitats, fisheries, wildlife, education, and outreach. The project is located in Collier County Sections 10, 13, and 14 of Township 52, Range 26, and within the San Marco Road roadway and right-of-way. The DEPARTMENT has designed a project to enhance wildlife habitats and by restoring estuarine habitats and hydrologic flows on the property. The COMMISSION recognizes that the project will provide improved habitat for fish and wildlife and ensure sustained function of these estuarine habitats and has agreed to contribute up to \$2,300,000 towards the project. The CITY will utilize the competitive bidding process in accordance with the Florida Statutes, to obtain the necessary construction services to execute this project. Because the costs are not known, this contract is being let on a cost reimbursement basis in an amount not to exceed \$2,300,000.

C. SUPPORT OF COMMISSION MISSION: This project supports the COMMISSION’s overall mission to manage fish and wildlife resources for their long-term well-being and the benefit of the people. This project will provide direct fish and wildlife habitat benefits in estuarine wetlands and improve water quality of water entering Fruit Farm Creek and the Rookery Bay Aquatic Preserve, submerged lands and waters managed by the DEPARTMENT as part of the Rookery Bay National Estuarine Research Reserve.

D. DEFINITIONS:

Estuarine: Relating to a system of deep-water and wetland tidal habitats characterized by fluctuating salinity.

Attachment A – SCOPE OF WORK

Project Name:	Fruit Farm Creek Mangrove Restoration	FWC Contract No.	20057
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2. DELIVERABLES

A. Deliverable #1

- i. Specific Project Deliverables & Associated Tasks:** Dewatering, erosion and sediment control, excavation, hauling and disposal, installation of culvert pipes under San Marco Road, bank stabilization, relocation of utility pipes and cables, placement of bedding materials, asphalt repaving, and installation of concrete end walls and manatee exclusion grating as specified in Construction Plans (Attachment C) and as agreed to by the CITY, the DEPARTMENT and the COMMISSION.
- ii. Minimum Level of Performance:** The CITY, or their subcontractor, will perform hydrological connection of Fruit Farm Creek through installation of water conveyance culverts below San Marco Road. Associated tasks will be completed as designed, permitted, and shown in Construction Plans (Attachment C) including erosion control, dewatering, selective clearing and grubbing of trees, excavation, disposal, placement of bedding material and riprap, relocation of utility cables, pipes, fixtures, fittings, asphalt pavement, installation of concrete end walls, installation of Manatee grates for 60" or greater pipe, grading, sodding, and other construction tasks as necessary.
- iii. Documentation / Criteria Used as Evidence of Performance:** The CITY will provide final as-built survey data and before and after photographs of the site(s) where work is performed. The COMMISSION Project Manager and DEPARTMENT Project Manager will complete site visits to verify completion of tasks. Each site visit will be evidenced by the completion of site visit checklist completed by FWC and signed by the DEPARTMENT prior to any payment.
- iv. Timeline for Completion:** All tasks for Deliverable #1 shall be completed to the satisfaction of the COMMISSION project manager and DEPARTMENT Project Manager and all invoice(s) shall be submitted to the COMMISSION Project Manager by May 31, 2023.

B. Deliverable #2

- i. Specific Project Deliverables & Associated Tasks:** Maintenance of traffic flow and traffic control personnel as specified in the Traffic Control Plan section of the Construction Plans (Attachment C) and as agreed to by the CITY, the DEPARTMENT and the COMMISSION.
- ii. Minimum Level of Performance:** The CITY, or their subcontractor, will perform maintenance of bidirectional traffic flow on San Marco Road during Project construction. All tasks will be completed as detailed in Traffic Control Plan section of Project Construction Plans (Attachment C) including installation and maintenance of signal control and information boards, signs, barricades, channeling devices, temporary lane identifiers, and signal operation and traffic direction.

Attachment A – SCOPE OF WORK

Project Name:	Fruit Farm Creek Mangrove Restoration	FWC Contract No.	20057
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- iii. **Documentation / Criteria Used as Evidence of Performance:** The CITY will provide final as-built survey data and before and after photographs of the site(s) where work is performed. The COMMISSION Project Manager and DEPARTMENT Project Manager will complete site visits to verify completion of tasks. Each site visit will be evidenced by the completion of site visit checklist completed by FWC and signed by the DEPARTMENT prior to any payment.
- iv. **Timeline for Completion:** All task associated with Deliverable #2 shall be completed to the satisfaction of the COMMISSION project manager and DEPARTMENT Project Manager and all invoice(s) shall be submitted to COMMISSION Project Manager by May 31, 2023.

C. Deliverable #3

- i. **Specific Project Deliverables & Associated Tasks:** The CITY will perform Construction Engineering and Inspection services (CEI), management of CITY subcontract(s), and management of CITY subcontractor(s) to complete Project Deliverables #1 and #2.
- ii. **Minimum Level of Performance:** The CITY will administer, monitor, and inspect the construction subcontract such that the project is constructed in conformity with the plans, specifications, and special provisions for the construction subcontract. Observe the subcontractor's work to determine the progress and quality of work. Identify discrepancies, report significant discrepancies to the COMMISSION Project Manager and DEPARTMENT Project Manager, and direct the subcontractor to correct such observed discrepancies. Inform the COMMISSION Project Manager and DEPARTMENT Project Manager of any significant omissions, substitutions, defects, and deficiencies noted in the work of the subcontractor and the corrective action that has been directed to be performed by the subcontractor. CEI services will be performed by a Professional Engineer licensed by the State of Florida.
- iii. **Documentation / Criteria Used as Evidence of Performance:** The CITY will provide records of CEI services performed, documentation of CITY personnel time spent completing CEI services, and rate information to the COMMISSION monthly.
- iv. **Timeline for Completion:** All tasks for Deliverable #3 shall be completed to the satisfaction of the COMMISSION Project Manager and all invoice(s) shall be submitted to the COMMISSION Project Manager by May 31, 2023.

3. FINANCIAL CONSEQUENCES

If the CITY fails to produce each deliverable within the time frame specified by the Scope of Work, Attachment A, the COMMISSION will reduce the payment by \$100.00 for every day after the deadline.

Attachment A – SCOPE OF WORK

Project Name:	Fruit Farm Creek Mangrove Restoration	FWC Contract No.	20057
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4. **PERFORMANCE:** See Contract for applicable terms and conditions.
5. **RENEWALS AND EXTENSION**
 - A. **RENEWAL:** See contract for applicable terms and conditions.
6. **EXTENSION:** See Contract for applicable terms and conditions.
7. **COMPENSATION AND PAYMENT**
 - A. **FEE SCHEDULE:** The CITY shall provide a fee schedule listing costs of all project items and tasks included in the CITY's procurement process.
 - B. **INVOICE SCHEDULE:** The CITY may submit partial invoices monthly. Each invoice will include the percentage of the Deliverable completed during that billing period and supporting documentation. The amount of payment requested will be the total amount for that Deliverable multiplied by the percentage of the Deliverable completed during the billing cycle. The COMMISSION understands that the CITY may do more work than the minimum specified for each Deliverable, but the COMMISSION will only pay the amount actual work completed by the CITY. Under no circumstances will the COMMISSION pay more than \$2,300,000.00 to the CITY for work done under this contract.

Deliverables 1 and 2 and 3: Total maximum amount payable = \$2,300,000.00
 - C. **TRAVEL EXPENSES:** N/A
 - D. **FORMS AND DOCUMENTATION:** N/A
8. **MONITORING SCHEDULE:** See Contract for applicable terms and conditions.
9. **INTELLECTUAL PROPERTY RIGHTS:** See Contract for applicable terms and conditions.
10. **SUBCONTRACTS:** The CITY shall follow all State of Florida procurement laws with respect to awarding contracts in completion of this project. The COMMISSION shall actively monitor the CITY's procurement process including attendance at all conferences and bid openings. The COMMISSION's Contract Manager and purchasing section shall be consulted prior to the awarding of any contracts in connection with this project.
11. **INSURANCE:** See Contract for applicable terms and conditions.
12. **SECURITY AND CONFIDENTIALITY:** See Contract for applicable terms and conditions.
13. **RECORD KEEPING REQUIREMENTS:** See Contract for applicable terms and conditions.
14. **NON-EXPENDABLE PROPERTY:** See Contract for applicable terms and conditions.

Attachment A – SCOPE OF WORK

Project Name:	Fruit Farm Creek Mangrove Restoration	FWC Contract No.	20057
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15. PURCHASE OR IMPROVEMENT OF REAL PROPERTY: See Contract for applicable terms and conditions.

16. SPECIAL PROVISIONS FOR CONSTRUCTION CONTRACTS

- A. DRUG-FREE WORKPLACE:** See Contract for applicable terms and conditions.
- B. CONTRACTOR ELIGIBILITY:** See Contract for applicable terms and conditions.
- C. PAYMENT BOND:** See Contract for applicable terms and conditions.
- D. PERFORMANCE BOND:** See Contract for applicable terms and conditions.
- E. CERTIFICATE OF CONTRACT COMPLETION:** See Contract for applicable terms and conditions.
- F. CERTIFICATE OF PARTIAL PAYMENT:** See Contract for applicable terms and conditions.

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Attachment B - Project Location

