

Agreement for Smart Utility Solution Services

This Agreement for Smart Utility Solution Services (“Project”) is made by and between Immokalee Water and Sewer District, an independent special district in Collier County, Florida created according to Chapter 189, Florida Statutes (the “District”), and _____ (“Contractor”), a corporation in the State of _____ and authorized to do business in the State of Florida.

Background

- A. The District desires to retain Contractor to provide Smart Utility Solution Services as described in the Scope of Services provided in Exhibit A.
- B. Contractor desires to provide the services required by the District as defined in this Agreement.

Terms and Conditions

1. **Background, Exhibits, and Documents.** The background provided above, and the exhibits listed below are part of this Agreement. Request for Proposals (RFP) No. 2024-01 and Contractor’s submittals provided in response to it are also part of this Agreement.

Exhibit A – Scope of Services and Compensation

Exhibit B – Contractor’s Insurance Requirements

[Exhibit C – Performance Bond Form](#)

2. **Definitions.** The following terms used in this Agreement have the following meanings:
 - 2.1. Agreement – This written document, as it may be amended from time to time and all incorporated documents.
 - 2.2. Law – All laws, statutes, rules, regulations, ordinances, codes and/or orders applicable to the Services.
 - 2.3. Services – The services described in **Exhibit A**, as well as all obligations, duties and responsibilities required of Contractor under this Agreement. The term “Services” also includes all Additional Services which are subsequently authorized in writing by the District.
 - 2.4. Additional Services – Subject to paragraph 10 of this Agreement, any services that are authorized by the District in a written amendment after this Agreement is executed.
 - 2.5. Subcontractor – All subcontractors, subconsultants, suppliers, experts and other entities

retained by Contractor to perform or provide any portion of the Services required under this Agreement.

3. **Effective Date and Term.** This Agreement will become effective on the last date all the parties have executed it, as demonstrated by the date under the signatures on the signature page and will remain effective until the Project is complete for a period of 5 years whichever is earlier, unless it is sooner terminated in accordance with the terms of this Agreement.
4. **Compensation for Services and Expenses.** For the timely and proper performance of the Services, the District shall pay Contractor the compensation set forth in **Exhibit A.** The District shall reimburse Contractor for expenses consistent with Section 112.061, Florida Statutes provided Contractor submits appropriate documentation substantiating the expense and certifies that such claimed expense is true and correct as to every material matter. Contractor shall refund the District if the reimbursement is more than the limits imposed in Section 112.061, Florida Statutes.
5. **Contractor's Representations and Warranties.** Contractor represents and warrants to the District as follows:
 - 5.1. **Conducting Business in Florida.** Contractor is duly authorized to conduct business in the State of Florida.
 - 5.2. **Authority.** Contractor has the full power and authority to execute and deliver this Agreement and to incur and perform the obligations provided for herein, all of which have been duly authorized by all proper and necessary actions of the governing entity of Contractor.
 - 5.3. **Accuracy of Response.** All information provided by Contractor in response to the solicitation for the Project was true and accurate when Contractor submitted it to the District and has not materially changed as of the Effective Date of this Agreement.
 - 5.4. **Understanding of Agreement.** Contractor has familiarized itself with and understands this Agreement, the Project, the Services, the Law, the site, and all local conditions that may affect Contractor's performance of this Agreement, including Contractor's compensation and the performance or furnishing of the Services.
 - 5.5. **Discrepancies.** Contractor has reviewed all available information and data shown or indicated in this Agreement and has given the District written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered and the District's written resolution thereof, if any, is acceptable to Contractor.
 - 5.6. **Expertise.** Contractor has special expertise in the type of services to be provided under this Agreement and Contractor acknowledges that such representations were a material inducement to the District to enter into this Agreement with Contractor.
 - 5.7. **Valid Agreement.** This Agreement is a valid, binding, and enforceable obligation of

Contractor, and does not violate any law, rule, regulation, contract, or agreement otherwise enforceable by or against Contractor except as it may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting the rights of creditors generally.

5.8. Scrutinized Companies.

[for contracts < \$1 million] Contractor certifies that it is in compliance with section 287.135, Florida Statutes. Contractor certifies that it is not on this list of Scrutinized Companies that Boycott Israel and is not engaged in a boycott of Israel. The District may terminate this Agreement if Contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel. Contractor acknowledges the remedies provided in subsection 287.135(5), Florida Statutes against anyone found to have submitted a false certification including civil penalties.

[for contracts ≥ \$1 million] Contractor certifies that it is in compliance with section 287.135, Florida Statutes. The District may terminate this Agreement if Contractor is found to be out of compliance with this statute. Contractor certifies that (1) it is not on any of the following lists: Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in Iran Terrorism Sectors, or Scrutinized Companies that Boycott Israel, and (2) it is not engaged in business operations in Cuba or Syria. The District may terminate this Agreement if Contractor is found to have been placed on the Scrutinized companies that Boycott Israel List or is engaged in a boycott of Israel. The District may terminate this Agreement if Contractor is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes or has been placed on a list created pursuant to section 215.473, Florida Statutes relating to scrutinized active business operations in Iran. Contractor acknowledges the remedies provided in subsection 287.135(5), Florida Statutes against anyone found to have submitted a false certification including civil penalties.

5.9. Public Entity Crimes. Contractor understands the requirements of sections 287.132 and 287.133, Florida Statutes and is not on the convicted vendor list for public entity crimes maintained by the Florida Department of Management Services. Contractor is in full compliance with sections 287.132 and 287.133, Florida Statutes, will remain in compliance with them throughout the term of this Agreement, and will notify the District if it becomes non-compliant.

5.10. E-Verify. Contractor is in compliance with section 448.095, Florida Statutes. As required by subsection 448.095(2)(a), Florida Statutes, Contractor has registered with and uses the E-Verify System to verify the work authorization status of all newly hired employees. As required by subsection 448.095(5)(b), F.S. Contractor shall require any subcontractors to provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract.

6. Contractor's Responsibilities.

6.1. Performance of Services. Contractor shall perform the Services upon the terms and

conditions set forth in this Agreement and upon any terms required under any government funding agreement.

- 6.2. **Changes.** Contractor shall immediately notify the District if anything changes regarding Contractor's representations and warranties, or other terms contained in this Agreement.
- 6.3. **Resources.** Contractor shall secure and maintain an adequate and competent staff of professionals and all facilities and equipment required to perform the Services.
- 6.4. **Key Personnel.** Contractor must not remove any key personnel or Subcontractors assigned to the Project without the prior written approval of the District. All key personnel will be available for the Project on a full-time basis, except as otherwise expressly approved in writing by the District. Such key personnel are as follows:

- 6.5. **Objectionable Employees.** If at any time during the term of this Agreement the District notifies Contractor in writing that any of Contractor's employees or the employees of any Subcontractor are objectionable to the District, Contractor shall remove or have the Subcontractor remove the objectionable employee from the Project and not reemploy the objectionable employee on any portion of the Services.
- 6.6. **Contractor's Representative.** Contractor shall designate in writing a single representative with the authority to transmit instructions, receive information, interpret, and deliver Contractor's policy and decisions related to the Services and bind Contractor with respect to any matter arising out of or relating to this Agreement.
- 6.7. **Information Related to the Services.** Contractor shall obtain and review all information and data which relates to the Services or which Contractor may reasonably anticipate may affect cost, scheduling, progress, performance or furnishing of the Services, including, but not limited to, information and data related to the Project, work of others under separate contracts, to the extent that such work may interface with the Services hereunder.
- 6.8. **Status Reports and Inspections.** Contractor shall routinely and continuously advise the District of the status of the Project, and the Services of Contractor. Contractor shall maintain documents obtained or generated under this Agreement and make them available upon request by the District. In addition to the documents and reports contemplated in a work order, Contractor shall, at no cost to the District, deliver to the District copies of all other Project documents and or reports under Contractor's possession or control that the District may request from time to time.
- 6.9. **Coordination with Others.** Contractor assist the District with the coordination of those various projects, work, and consulting services retained by the District applicable to the Project. Contractor shall review all information necessary to coordinate those various projects, work, and consulting services, and make recommendations to eliminate any

problems where the projects, work or services interface with the Project or Services.

- 6.10. **Laws.** Contractor shall secure all licenses or permits required by Law for the performance of the Services and shall comply with all Laws in effect at the time of the execution of this Agreement and the time of performance of the Services.
- 6.11. **No Discrimination.** Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended, and the Florida Civil Rights Act of 1992. Contractor shall not discriminate in any form or manner against its employees or applicants for employment on the basis of race, color, national origin, religion, sex, age, handicap, or marital status. Further, Contractor shall comply with all applicable rules, regulations or executive orders promulgated to give effect to the Civil Rights Act of 1964, as amended.
- 6.12. **Standard of Performance.** Contractor shall perform and complete the Services in a timely and professional manner and in accordance with the standard of care, skill, and diligence customarily provided by professionals with expertise and experience in the type of Services to be provided hereunder, and in accordance with sound professional principles and practices. Contractor acknowledges that it has represented to the District that Contractor has expertise and experience in the type of services to be rendered hereunder and that such representation was a material inducement to the District to enter into this Agreement with Contractor.
- 6.13. **Notice of Claims.** Contractor shall immediately notify the District if it becomes aware of any circumstances which may reasonably give rise to any claim against the District for Services performed under or related to the Services performed under this Agreement.
- 6.14. **No Conflicts of Interest.** Contractor is not under contract and will not contract for or accept employment for the performance of any work or services with an individual, business, corporation, or government unit that would create a conflict of interest in the performance of its obligations under this Agreement.

7. **District's Responsibilities.**

- 7.1. **Applications for Payment.** The District shall review and consider, in a reasonably prompt and thorough fashion, all applications for payments, reports, schedules, estimates, drawings, proposals or other documents presented to the District by Contractor and shall inform Contractor of the District's decisions or otherwise take appropriate action within a reasonable time to not unreasonably delay the Services of Contractor.
- 7.2. **District's Representative.** The District shall designate in writing a single representative with authority to transmit instructions, receive information and interpret and deliver the District's policy and decisions pertinent to the Services.
- 7.3. **Existing information.** Upon Contractor's specific request, the District shall cooperate in providing to Contractor, all existing and available studies, reports, surveys, and other information and data regarding the Project to the extent such items are in the District's

possession and the District has actual knowledge of their existence and location. Despite any other provision of this Agreement, the District does not represent or warrant the accuracy or completeness of any such items, unless it is expressly noted otherwise in writing on such item.

8. Termination of Agreement.

- 8.1. **Termination for Convenience.** The District has the right to terminate this Agreement, in whole or in part without cause upon written notice to Contractor. In such event, Contractor's sole and exclusive recovery against the District will be limited to that portion of Contractor's compensation earned to the date of termination, together with any costs reasonably incurred by Contractor that are directly attributable to the termination. The Contractor shall not be entitled to any further recovery against the District, including, but not limited to, anticipated fees or profits on Services not required to be performed. The District in its sole discretion shall determine that portion of the compensation earned for any incomplete Services based upon the ratio of such part of the Services completed relative to the entire Services. Termination without cause shall be effective upon delivery of written notice to Contractor.
- 8.2. **Termination for Cause.** Contractor will be considered in material default of this Agreement and the District may terminate this Agreement, in whole or in part, for any of the following reasons: (a) failure to begin Services within the time specified in a Work Order, or (b) failure to timely and properly perform the Services required hereunder or as directed by the District, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by Contractor or by any of Contractor's principals, partners, officers or directors, or (d) failure to obey any Law, or (e) failure or refusal to allow public access to all public record documents or other materials made or received by Contractor in conjunction with this Agreement, unless exempt under Florida law, or (f) any other material breach of this Agreement. In any such event, the District may terminate this Agreement, in whole or in part, by giving Contractor written notice. In the event of any such termination for cause, the District is not obligated to make any further payments to Contractor hereunder until such time as the District has determined all costs, expenses, losses and damages which the District may have incurred as a result of such default by Contractor, whereupon the District will be entitled to set off all costs, expenses, losses and damages so incurred by the District against any amounts due Contractor hereunder. Termination for cause will be effective upon 14 days-written notice to Contractor.
- 8.3. **Termination by Contractor.** If the District violates any provision of this Agreement, and if the violation continues for 60 days after Contractor has delivered written notice of the violation, then Contractor may, without prejudice to any other right or remedy, terminate or cancel this Agreement by giving the District 14 days written notice of termination. In the event of any such termination by Contractor, Contractor's sole and exclusive remedies against the District will be limited to those set forth in paragraph 8.1 above.
- 8.4. **Notice and Cure.** Despite the provisions of paragraphs 8.2 and 8.3, this Agreement will

not terminate for cause if the party receiving the notice begins, within seven days of receipt, to correct its failure and proceeds diligently to cure such failure within thirty 30 days of receipt of the notice; provided, however, that if and to the extent such cause for termination cannot reasonably be cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues to diligently cure the same, then the cure period may be further extended by the party that provided the notice.

8.5. **Remedies if no Default.** If, after termination of this Agreement as provided for in paragraph 8.2 above, it is determined for any reason that Contractor was not in default, or that its default was excusable or that the District otherwise was not entitled to the remedy against Contractor provided for in paragraph 8.2, then such termination for cause will be considered to be a termination for convenience as described in paragraph 8.1 and Contractor's sole and exclusive rights and remedies against the District shall be the same as and limited to those afforded Contractor under paragraph 8.1 above.

8.6. **Delivery of material after termination.** Within 10 days after any termination of this Agreement, Contractor shall deliver to the District all records, papers, drawings, models, and other material prepared by and for Contractor with respect to the Project and Services.

9. **Acceptance of Final Payment.** Contractor's acceptance of final payment constitutes a full waiver of all claims by Contractor against the District arising out of and relating to this Agreement or otherwise related to the Project, except those previously made in writing and identified by Contractor as unsettled at the time it submits its invoice for final payment. Neither the acceptance of the Services nor any payment by the District shall be deemed to be an acceptance of defective or incomplete Services or waiver of any of the District's rights against Contractor.

10. **Additional Services.**

10.1. **Notice to District.** If Contractor is of the opinion that any services the District directs it to perform are beyond the Scope of the Services under this Agreement, Contractor shall, within seven business days of such direction, notify the District in writing of its opinion. The District shall, within 10 business days after receipt of such notification, determine whether such service is beyond the scope of this Agreement and constitutes Additional Services. If the District determines that such service does constitute Additional Services, it will provide extra compensation to Contractor based upon the rates and terms provided in **Exhibit A**.

10.2. **Project Schedule.** **[delete this paragraph if there is no schedule]** If, in the opinion of the District, the progress of the Services during any period is substantially less than the amount which is necessary to meet the Project schedule, the District may require Contractor to take whatever action is necessary, in the opinion of the District, to put the Services back on schedule. Such action shall not constitute Additional Services unless the delays were caused by circumstances beyond the control and fault of Contractor or its agents, employees and Subcontractors.

- 10.3. **Claims against the District.** In the event of claims by others against the District in connection with the Project or the Services, Contractor shall provide the District with such technical assistance that the District may request. Such assistance shall constitute Additional Services, unless such claims are caused by the failure of Contractor, its agents, employees or Subcontractors to comply with the terms and conditions of this Agreement or otherwise perform their duties under this Agreement.
- 10.4. **Delays more than and less than 30 days.** **[delete this paragraph if there is no schedule]** Subject to the provisions of paragraph 10.2 above, Contractor shall not make any charges or claims for damages for any delays or hindrances of less than 30 days from any cause whatsoever during the progress of any portion of the Services. The District may compensate such delays or hindrances of less than 30 days by an extension of time as the District may decide. However, any such extension shall not operate as a waiver of any other rights of the District. The District will consider delays or hindrances that exceed 30 days and will determine whether any additional services are needed from Contractor unless such delays or hindrances were caused in whole or in part by Contractor, its employees, agents, or Subcontractors or because of a suspension of the Project or Services entirely or partly by the District.
- 10.5. **Audit.** If the District requires Contractor to provide it with an audit of its Project costs, such audit will not be considered Additional Services.

11. Assignment and Subcontractors. Contractor shall not sublet, assign, or transfer this Agreement or any Services without the prior written consent of the District, which consent may be withheld in the District's sole discretion. Contractor shall be solely responsible for the employment, direction, supervision, compensation, and control of any and all Subcontractors. Contractor shall cause all Subcontractors to abide by the terms and conditions of this Agreement and all Laws. All agreements between Contractor and Subcontractors shall be in writing, with a copy of such agreements to be provided to the District upon its request for same.

12. Indemnification. Contractor shall indemnify and hold harmless the District, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the contract. This provision is consistent with Section 725.08, Florida Statutes.

13. Contractor's Insurance and Bond Requirements.

13.1. **Insurance.** Contractor must maintain during the entire term of this Agreement, insurance in kinds and amounts provide in **Exhibit B** with a company or companies authorized to do business in the State of Florida. Contractor shall not commence work under this Agreement until the District has received acceptable certificates of insurance showing evidence of such coverage. The amounts and types of insurance shall be appropriate for the services being performed by the Contractor, its employees or agents and must conform to the minimum requirements of this paragraph.

13.2. **Performance and Payment Bond.** Contractor shall provide to the District a certified copy of a recorded bond substantially in the form provided in **Exhibit C**. The bond must be in an amount equal to the compensation under the Contract, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. The bond must remain in effect not less than one year after the date when final payment becomes due. The bond must comply with the following requirements.

13.2.1. All Bonds must be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Bureau of the Fiscal Service, Surety Bond Branch, U.S. Department of the Treasury. Additionally, the surety shall:

- a. hold a certificate of authority authorizing it to write surety bonds in Florida
- b. have twice the minimum surplus and capital required by the Florida insurance code at the time of the Effective Date of the Contract;
- c. be in compliance with the provisions of the Florida insurance code;
- d. hold a currently valid certificate of authority issued by the United States Department of the Treasury under 31 U.S.C. Sections 9304 to 9308; and
- e. provide an affidavit executed by an officer of the surety bond insurer as evidence that the surety company is in compliance with the foregoing requirements.

13.2.2. All Bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

13.2.3. If the surety on any Bond furnished by Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in Florida or it ceases to meet the requirements provided in this Exhibit, Contractor shall within twenty (20) days thereafter substitute another Bond and surety, both of which shall comply with the requirements of this Exhibit.

13.2.4. All Bonds must be obtained from surety or insurance companies that are duly licensed or authorized to conduct business in the state of Florida. In addition, such sureties and insurance companies must have an A.M. Best company rating of "A -" or better.

14. Project Documents and Data.

14.1. One (1) copy of all technical data and working papers regarding the Services, whether

existing in the office of the District or in the office of Contractor, shall be made available to the other party to this Agreement without expense to such other party. Additional copies shall be made available at the expense of the requesting party.

- 14.2. All Project documents, tracings, plans, specifications, maps, evaluations, reports, technical data, and computer application code, other than working papers prepared or obtained under this Agreement, are the property of the District without restriction or limitation of use, and shall be made available, upon request, to the District at any reasonable time. Contractor, at its own expense, may retain copies thereof for its files and internal use. Any use by the District of such materials obtained under this Agreement for any other Project or use of incomplete materials obtained from Contractor by the District shall be made at the risk of the District. However, this does not constitute a disclaimer of the professional liability of Contractor with respect to the original Services as used for the Project.
- 14.3. All final plans and documents that are required by Florida Law to be endorsed and are prepared by Contractor in connection with the Services shall bear the endorsement of a person in the full employment of Contractor or duly retained by Contractor and duly licensed in the appropriate professional category.
- 14.4. Contractor shall make any patentable product or result of the Services and all information, design, specifications, know-how, data, and findings available to the District without cost to the District. No material prepared in connection with this Project will be subject to copyright by Contractor, all such copyrights being the property of the District. the District shall have the right to publish, distribute, disclose, and otherwise use any material prepared by or for Contractor with respect to the Project. Any use of material or patents obtained by the District under this Agreement for any purpose not associated with this Project shall be at the risk of the District. In the District's discretion, whenever any renderings, photographs of renderings, photographs of models or photographs of the Project are released by the District for publicity, proper credit may be given to Contractor, provided the giving of such credit is without cost to the District.
- 14.5. Contractor must not make any statements, press releases or public releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or any other information obtained or furnished in compliance with this Agreement, except at meetings where representatives of the District are present, without the District's prior written consent. Contractor shall not publish, copyright, or patent any of the data furnished or developed with respect to the Project without first obtaining the District's written consent, as all such rights are the property of the District.

15. Public Records.

- 15.1. **Duty to Maintain and Provide Records.** Contractor shall keep and maintain all public records required to perform services under this Agreement as required by Chapter 119,

Florida Statutes unless they are exempt under Florida law. If Contractor believes any record it provides to the District is exempt from public records disclosure, it must specifically identify it and cite the applicable exempting law. Contractor is solely responsible for defending any claimed exemption from disclosure under Chapter 119, Florida Statutes. Contractor shall ensure that public records that are exempt from public records disclosure are not disclosed except as authorized by law during the term of this Agreement and following its completion if the Contractor does not transfer the records to the District.

15.2. **IF CONTRACTOR CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE AUTHORITY'S CUSTODIAN OF PUBLIC RECORDS CONTACT THE DISTRICT'S CUSTODIAN OF PUBLIC RECORDS OFELIA GONZALEZ AT: 239-658-3630, EMAIL: OFELIAGONZALEZ@IMOKALEEWATERSEWER.COM OR MAILING ADDRESS: 1020 SANITATION ROAD, IMMOKALEE, FL 34142.**

15.3. **Post Contract Responsibilities.** Upon completion of this Agreement, Contractor shall keep and maintain, at no cost, to the District, all public records produced under this Agreement in the possession of the Contractor or shall transfer them to the District. If the Contractor transfers all public records to the District, Contractor shall destroy any duplicate public records. If Contractor keeps and maintains public records after completion of the contract, the Contractor shall meet all legal requirements for retaining public records including the rules and retention schedules adopted by the Division of Library and Information Services of the Department of State under section 119.021(2)(a), Florida Statutes. All records stored electronically must be provided to the District upon request from the District in a format that is compatible with the information technology systems of the District.

15.4. **Audit Rights.** Contractor shall keep all books, records, files, plans, drawings, and other documentation, including all electronically stored items, which concern or relate to the Services hereunder (collectively referred to herein as "Records") for a minimum of three (3) years from the date of expiration or termination of this Agreement or as otherwise required by Law, which ever date is later. The District, or any duly authorized agents or representatives of the District, shall have the right to audit, inspect and copy all or such Records as often as they deem necessary during any such period of time. This right to audit, inspect and copy the Records shall include all Records of Subcontractors.

16. Miscellaneous Provisions.

- 16.1. **Entire Agreement.** This written document shall constitute the entire agreement between the parties hereto and the Agreement shall not be amended or modified except in writing duly executed by the party against whom such an amendment or modification is sought to be enforced. This Agreement shall govern the relationship between the District and Contractor on the Project.
- 16.2. **Successors.** the District and Contractor each hereby binds itself, its successors, assigns, and legal representatives to the other.
- 16.3. **No Third-Party Beneficiaries.** The rights and obligations in this Agreement shall inure solely to the parties hereto (their successors, assigns and legal representatives) and no other party shall have any rights or obligations under or by virtue of this Agreement.
- 16.4. **Applicable Law and Venue.** This Agreement shall be governed by and construed under the laws of the State of Florida. Venue for any action under state law arising under this Agreement will be in the Twelfth Judicial Circuit in and for Collier County, Florida. Claims justiciable in federal court will be in the Middle District of Florida.
- 16.5. **Notices.** All notices or other communications permitted or required under this Agreement must be in writing and must be sent to the party at that party’s address set forth below or at whatever other address the party specifies in writing. Notices must be personally delivered, sent by certified or registered mail, sent by overnight courier, postage prepaid, or sent to all email addresses listed below for each party.

If to the District:

Name and Title
1020 Sanitation Road,
Immokalee, Florida 34142
Email #1 _____
Email #2 _____
Email #3 _____

If to the Contractor:

Name and Title
Company
Address
City, State, Zip
Attention: _____
Email #1 _____
Email #2 _____
Email #3 _____

- 16.6. **No Construction Against Drafting Party.** Each party acknowledges that it has carefully reviewed and understands this Agreement and has had an opportunity to review it with counsel of its choosing. This Agreement shall not be construed more strongly against any party, regardless of who drafted or prepared it.
- 16.7. **Communications.** The Contractor's communications with the District shall be limited to the District's Executive Director and designated staff. Communications with the District's Board Members are prohibited, except with the prior permission of the District's Executive Director or at a duly noticed public board meeting. Any such prohibitive communications shall be deemed to be a material breach of this Agreement by Contractor. This provision does not prohibit or limit contacts by or on behalf of the District Board Members with Contractor.
- 16.8. **Interpretation.** All words used herein in the singular shall extend to and include the plural, and the use of any gender shall extend to and include all genders. Unless the context requires otherwise: The term "include" contemplates "including but not limited to." The terms "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 16.9. **Headings.** The captions and headings herein are for convenience of reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions. Unless otherwise indicated, references to paragraphs include all subparts.
- 16.10. **Time is of the Essence.** Time is of the essence of this Agreement and each of its provisions.
- 16.11. **No Waiver.** Unless expressly stated in this agreement, non-enforcement of any provision of this Agreement by either party does not constitute a waiver of that provision, nor will it affect the enforceability of that provision for the remainder of the term of this Agreement.
- 16.12. **Contest of District Decisions.** The District shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the Services called for hereunder, or the character, quality, amount, or value thereof. The decision of the District upon all such claims, questions or disputes shall be final and binding if not contested by Contractor in a written notice delivered to the District within seven days after Contractor's receipt of written notice from the District concerning such decision. Contractor shall not delay or postpone providing Services during the pendency of any dispute.
- 16.13. **Survival.** All express representations, indemnifications, or limitations made or given in this Agreement will survive its completion or termination for any reason.
- 16.14. **Severability.** If any term of this Agreement is for any reason invalid or unenforceable,

the rest of the Agreement remains fully valid and enforceable.

16.15. **Independent Contractor.** Contractor's relationship with the District is that of an independent contractor. Contractor has the discretion, subject to the requirement that it perform the services required hereunder competently and professionally in accordance with the applicable professional standards and otherwise comply with the terms of this Agreement, to select the means and methods of performing such services. In this regard, Contractor is fully responsible for the employment, direction, supervision, compensation, and control of all persons employed or retained by Contractor. Contractor is responsible for compliance with all applicable laws and for paying all income and employment taxes, and the District is not responsible for collecting, paying, or withholding any state or federal taxes.

16.16. **Waiver of Jury Trial.** To the extent permitted by applicable law, Contractor and the District irrevocably waive any right to trial by jury in any legal proceeding arising out of or relating to this Agreement or any of the transactions contemplated by it. Neither the District nor Contractor or any successor thereof will seek a trial by jury in any action or proceeding (whether at law or in equity, whether direct or collateral, whether in contract or in tort) arising out of or related to this Agreement or the relationship created by it. Neither the District nor Contractor shall seek to consolidate any action or proceeding in which trial by jury has been waived with any other action or proceeding in which a jury trial cannot be or has not been waived.

[The remainder of this page is intentionally blank]

The parties have caused their duly qualified representatives to execute this Agreement on the dates set forth below.

Witness:

Contractor:

Signature

Firm Name

Print name

Signature

Print title

Print name

Date

Print title

Date

Attest:

Immokalee Water and Sewer District:

Signature

Signature

Print name

Print name

Print title

Print title

Date

Date

Approved as to legal sufficiency:

Exhibit A

Scope of Services and Compensation

Exhibit B

Contractor's Insurance Requirements

1. Workers Compensation. Coverage must be provided for all employees and subcontractors with statutory limits in compliance with the applicable state and federal laws. In addition, the policy must include the following Employer's Liability with a minimum limit per accident in accordance with statutory requirements.
 - a. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide District with thirty (30) days written notice of cancellation and/or restriction.
 - b. Contractor must be in compliance with all applicable state and federal workers' compensation laws.

2. Commercial or Comprehensive General Liability. Coverage must include:
 - a. \$1,000,000.00 combined limit per occurrence for bodily injury, personal injury and property damage.
 - b. Contractual coverage applicable to this specific contract, including any hold harmless and/or indemnification agreement, broad form property damage, explosion, collapse, and underground hazard coverage and independent contractor's coverage.
 - c. Additional Insured. District must be specifically included as an additional insured.
 - d. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide District with thirty (30) days written notice of cancellation and/or restriction.

3. Comprehensive Automobile Liability. Coverage must be afforded on a form no more restricted than the latest edition of the Comprehensive Automobile Liability Policy filed by the Insurance Services Office and must include:
 - a. \$1,000,000.00 combined single limit per accident for bodily injury and property damage.
 - b. Owned Vehicle.
 - c. Hired and Non-Owned Vehicles.
 - d. Employee Non-Ownership.
 - e. Additional Insured. District is to be specifically included as additional insured.
 - f. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide District with thirty (30) days written notice of cancellation and/or restriction.

4. Watercraft/Aircraft Liability. If Contractor's provision of services involves utilization of watercraft or aircraft, watercraft and/or aircraft liability coverage must be provided to include bodily injury and property damage arising out of ownership, maintenance or use of any watercraft or aircraft, including owned, non-owned and hired.

5. Professional Liability. Coverage must include:
 - a. Minimum limit of \$1,000,000.00 per occurrence or claim of malpractice, negligence, error and omissions.
 - b. Minimum limit of \$1,000,000.00 in the aggregate for claims of malpractice,

- negligence, error and omissions.
- c. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts.
 - d. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide District with thirty (30) days written notice of cancellation and/or restriction.
 - e. Professional liability insurance shall continue in force until the end of the fifth calendar year following the calendar year in which the Agreement is terminated. The current professional liability insurance policy, if not renewed, shall provide for an extended reporting period on the existing policy through said fifth calendar year.

6. Additional Requirements.

- a. The required Certificates of Insurance not only shall name types of policies provided but also shall refer specifically to the Agreement.
- b. Insurance coverage shall be placed with insurers or self-insurance funds, satisfactory to the District, licensed to do business in the State of Florida and with a resident agent designated for the service of process. Contractor shall provide the District with financial information concerning any self-insurance fund insuring Contractor. At the District's option, self-insurance fund financial information may be waived.
- c. All the policies of insurance so required of Contractor, except workers compensation and professional liability, shall be endorsed to include as additional insureds: the District, its directors, officers, employees and agents. Such insurance policies shall include or be endorsed to include a cross liability clause so the additional insureds will be treated as if a separate policy were in existence and issued to them. If the additional insureds have other insurance, which might be applicable to any loss, the insurance required of Contractor shall be considered primary, and all other insurance shall be considered excess. The cross liability clause does not increase the limits of liability or aggregate limits of the policy.
- d. Deductible and self-insured retention amounts shall be subject to approval by the District, which approval shall not be unreasonably withheld. Contractor is responsible for the amount of any deductibles or self-insured retentions.
- e. Approval of the insurance by the District shall not relieve or decrease the liability of Contractor hereunder. Contractor acknowledges and agrees the District does not in any way represent the insurance (or the limits of insurance) specified in this Section 14 is sufficient or adequate to protect Contractor's interests or liabilities, but are merely minimums.
- f. All of the policies of insurance required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed, or renewal refused, until at least thirty (30) days prior written notice has been given to the District and Contractor by certified mail. Contractor shall give notice to the District within twenty-four (24) hours of any oral or written notice of adverse change, non-renewal or cancellation. If the initial insurance

expires prior to completion of the work, renewal Certificates of Insurance shall be furnished thirty (30) days prior to the date of their expiration.

- g. All insurance required hereunder shall remain in full force and effect until final payment and at all times thereafter when Contractor may be observing the correction, removal or replacement of defective work.
- h. Professional liability insurance shall continue in force until the end of the fifth calendar year following the calendar year in which the Agreement is terminated. The current professional liability insurance policy, if not renewed, shall provide for an extended reporting period on the existing policy through said fifth calendar year.
- i. Contractor shall, upon request by the District, deliver to the District a copy of each insurance policy purchased by Contractor.
- j. All policies, except for workers' compensation and professional liability, shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of subrogation against the District, its Contractors, directors, officers, employees, representatives or agents. Nothing contained in these insurance requirements is to be construed as limiting the liability of Contractor or Contractor's insurance carriers.
- k. The commercial (occurrence form) or comprehensive general liability (occurrence form) insurance shall include contractual liability insurance applicable to all of the Contractor's obligations under the Agreement, including any indemnity or hold harmless provision.
- l. Contractor shall ensure that all Subcontractors procure and maintain, until the completion of that party's services, insurance of the types and in the coverage amounts required to be carried by Contractor in this Agreement unless the District agrees in writing, in advance of Contractor's employment of any such Subcontractor, to other types of coverage and/or lower coverage amounts. Provided however, that professional liability insurance shall not be required under this Agreement for Subcontractors, unless such party is a licensed professional. The preceding sentence does not preclude Contractor from requiring such insurance. Contractor is responsible for ensuring that all Subcontractors comply with all the insurance requirements contained herein relative to each such party.

Exhibit C
PUBLIC CONSTRUCTION BOND
authorized by section 255.05, Florida Statutes

Bond No. _____

BY THIS BOND, We _____, as Principal and _____, a corporation, as Surety, are bound to **Immokalee Water and Sewer District**, herein called Owner, in the sum of \$ _____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated _____, 20____, between Principal and Owner for construction of _____, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section [255.05\(1\)](#), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

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

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

DATED ON _____ .

(Signature of Principal)

By _____ (printed name and title)

STATE OF _____ COUNTY OF _____

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this ____ day of _____, 20____, by [name of person acknowledging].

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

Personally Known _____ OR Produced Identification _____

Type of Identification Produced:

DATED ON _____ .

(Signature of Surety)

By _____ [printed name and title] (As Attorney in Fact)

STATE OF _____ COUNTY OF _____

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this ____ day of _____, 20____, by [name of person acknowledging].

Signature of Notary Public

[Name of Notary Typed, Printed, or Stamped]

Personally Known _____ OR Produced Identification _____

Type of Identification Produced: