

LOWER FLORIDAN AQUIFER WELLS INSTALLATION AGREEMENT

THIS AGREEMENT is made as of the date of the last signature affixed hereto by and between:

POLK REGIONAL WATER COOPERATIVE, an independent special district created under the laws of the State of Florida whose address is; 330 West Church Street, Bartow, Florida 33831 (“**Cooperative**”)

-and-

Florida Design Drilling, LLC a Limited Liability Corporation authorized to do business in the State of Florida whose address is: 7733 Hooper Road, West Palm Beach, FL 33411 (“**Contractor**”)

Cooperative and Contractor are referred to herein individually as “**Party**” or collectively as (“**Parties**”)

RECITALS:

The Cooperative was formed on June 7, 2016, by and between the Cities of Auburndale, Bartow, Davenport, Eagle Lake, Fort Meade, Frostproof, Haines City, Lake Alfred, Lakeland, Lake Wales, Mulberry, Polk City, Winter Haven Dundee, Lake Hamilton, and Polk County Government collectively known as the “Members”; and

On March 20, 2024, the Southeast Well Field Project Board and the West Polk Lower Floridan Aquifer Project Board authorized the solicitation of a well drilling contractor that was published on June 11, 2024, with proposals due on July 25, 2024, and the selected Contractor was selected on July 29, 2024; and

The Contractor agrees with the Cooperative, for the consideration herein mentioned, and at their own proper cost and expense, to perform all the Work and furnish all the material, equipment, supplies and labor necessary to carry out this agreement in the manner and to the fullest extent as set forth in the attached Bid documents, being hereby made as such a binding part of this Contract as if written word for word herein, and whereas the Contractor has furnished satisfactory Bond and has complied with insurance requirements of the Specifications in Bid 2024-ITB-264 Lower Floridan Aquifer Wells for the Polk Regional Water Cooperative; and

The Southeast Well Field (referred to herein as “Southeast”), and the West Polk Lower Floridan Aquifer (referred to herein as “West Polk”) and collectively (referred to herein as the “Project”); and

In order to meet Cooperative’s schedule for completion of the Project, the Parties hereto wish to enter into this Agreement (referred to hereinafter as the “Agreement”), which sets out the terms and conditions under which the Contractor will begin to provide the services to the Cooperative for the installation of four Southeast Lower Floridan Aquifer Wells and West Polk Test Production 2 (referred to TPW2). TPW2 shall consist of a Lower Floridan Production Well, a lower Floridan Monitor Well, an Upper Floridan Monitor Well, and a Surficial Well.

NOW THEREFORE in consideration of the mutual promises and agreements of the Parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. Representations and Warranties of the Parties. The Parties hereby represents, warrants, and covenants that, as of the date hereof:

(a) The Party is a legal entity, duly organized, validly existing, and in good standing under the laws of the state and country of its formation and has all requisite power, ability, right, and authority to enter into and perform this Agreement, and authorized to provide services in the State of Florida.

(b) The execution, delivery, and performance of this Agreement has been duly authorized and approved by all necessary governmental, corporate, and similar action on its part.

(c) The execution, delivery, and performance of this Agreement will not conflict with, or result in any violation of, or constitute a default or a condition which upon notice or lapse of time, or both, would constitute a default under the organizational documents of such Party nor under any judgment, order, writ, injunction, decree, rule, regulation, permit, license, note, agreement, mortgage, deed, contract or other instruments that apply to, or which bind such Party.

(d) This Agreement is a legally valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally, by general principles of equity and by the exercise of judicial discretion.

(e) There are no actions, suits, proceedings, or governmental investigations pending, or, to such Party's best knowledge, threatened, against it, or judgments, decrees, orders, rulings, writs, or injunctions outstanding against it, that would in each such case have an adverse effect upon such Party's ability to consummate and perform its obligations hereunder.

(f) The Contractor is: 1) not owned by the government of a Foreign Country of Concern; 2) the government of a Foreign Country of Concern does not have a Controlling Interest in the Contractor; and, 3) the Contractor is not organized under the laws of has its principal place of business in a Foreign Policy of Concern. For purposes of this subsection, a "Foreign Policy of Concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Venezuelan regime of Nicolás Maduro or the Syrian Arab Republic, including any agency of or any entity of significant control of such Foreign County of Concern. Also, for purposes of this subsection, "Controlling Interest" means possession of the power to direct or cause the direction of the management of the policies of a company, whether through ownership of securities, by contract, or otherwise. A person or entity that directly or indirectly has the right to vote 25 percent or more of the voting interests of the company or is entitled to 25 percent or more of its profits is presumed to possess a controlling interest.

2. Scope of Work. Cooperative hereby retains the services of the Contractor and the Contractor hereby agrees to proceed with and diligently undertake and perform the work described in the Contract Documents and in brief requires the installation of four Southeast Lower Floridan Aquifer Production Wells and West Polk Test Production 2 (referred to TPW2). TPW2 shall consist of a Lower Floridan Aquifer Production Well, a lower Floridan Aquifer Monitor Well, an Upper Floridan Aquifer Monitor Well, and a Surficial Aquifer Well.

3. Standard of Care. The standard of care for all work performed by the Contractor in accordance with this Agreement shall be the care, skill, and diligence ordinarily used by members of the Contractor's profession practicing under similar conditions at the same time and locality of the Project.

4. Contract Price. The Contract price includes the total sum being \$11,889,300.00 for Southeast, and \$7,571,950.00 for West Polk. The Contractor's total price for all work performed is the sum of the work performed at Southeast and West Polk and is \$19,461,250.00. This total contract price shall be reduced by the unused amount if such Work is not completed.

5. Schedule.

Contractor shall commence to provide services within ten (10) calendar days after the execution of this Agreement by all parties and the Contractor shall achieve Substantial Completion with Beneficial Occupancy by the Cooperative by December 31, 2026, and all work and all testing shall be complete. The Contractor shall have 60 calendar days from Substantial Completion to achieve Final Completion and be ready for final payment.

6. Payment for Services

(a) Payment for Quantities. Payment for those items requiring payment on a unit price basis will be made for the actual unit quantities, as provided for in the Technical Specifications.

(b) Partial Payments. Payment will be made to the Contractor for the Contract Work actually performed by the Contractor (during the previous calendar month) and approved by the Cooperative subject, however, to retention by the Cooperative of an amount equal to five percent (5%) of the payment in accordance with F.S. 218.735. Only one Application for Payment shall be accepted in any 30 calendar day period. If any part of the Contractor's Application for Payment is in dispute, the Contractor shall accept the amount (if any) that is not in dispute.

(c) Final Acceptance and Payment. Upon completion of the Work or as soon thereafter as practicable, the Cooperative and Professional shall make a final inspection and, if appropriate, acceptance of the Work, after which Contractor shall prepare a final estimate of all Work completed under this Contract. Payment therefore of the balance due shall be made in accordance with the Contract provisions. Payment on the final estimate shall include the full amount for the Work completed, based on the unit prices or lump sum of this Contract, subject, however, to the deduction of any payments already made under this Contract to the Contractor. Final Payment cannot be made until the Contractor provides the Cooperative: (a) a general release of lien and (b) a release of lien from each vendor, subcontractor, or other party that may have provided the Cooperative a Notice to Owner or other indication that they may not have been paid for services provided.

7. Contract Distribution. Three (3) original Agreements shall be executed. One executed copy will be provided to the Contractor, the Cooperative, and the City of Lakeland City Clerk.

8. Title to Work

(a) All drawings, specifications, equipment lists, material take-offs, documents, reports, studies, and estimates prepared and work provided by the Contractor by or on behalf of Cooperative in respect of the Project, whether or not same is provided by Contractor as part of the work, shall remain the exclusive and sole property of Cooperative.

(b) The work provided shall be free and clear of any and all liens and claims.

9. Term Termination and Suspension of Work.

(a) This Agreement shall become effective and binding as of the date first set forth above and, unless renewed or terminated by a mutual written agreement of the Parties, shall remain in full force and effect during the period in which Contractor services are undertaken.

(b) If either Party is in material default of its obligations hereunder, and such default remains uncured for twenty (20) days after written notice has been given, or if either Party becomes insolvent or bankrupt, then, the non-defaulting party may terminate this Agreement and pursue any and all remedies, damages, and claims allowable to it under applicable law, but subject to compliance with the dispute resolution process set forth in Article 13 below.

(c) If either Party hereunder discovers, learns, or gathers material information which gives it reasonable grounds to believe that the Project is no longer feasible, is unlikely to proceed, or otherwise is expected to be materially delayed, then such Party shall promptly notify the other Party and provide all relevant details together with its reasons behind such assessment or conclusion whereupon and Parties shall negotiate in good faith to determine a fair and appropriate response, including either the early termination of the Agreement or the suspension of the Preliminary Work for a period of time; provided that under all such circumstances, Cooperative shall remain fully liable for the payment of any fees due and outstanding for services furnished by the Contractor hereunder.

10. Force Majeure. Any delays in or failure of performance by either Party under this Agreement shall not constitute a default hereunder or give rise to any claims for damages if and to the extent caused by occurrences beyond the reasonable control of the Party affected, including, but not limited to terrorism, acts of governmental authority, acts of God, strikes or other concerted acts of workers, fires, floods, explosions, riots, pandemics, war, rebellion or sabotage. The Party claiming force majeure must notify the other Party in writing within twenty (20) days of having notice of the force majeure event specifying the nature of the event and the anticipated duration. The Party claiming force majeure shall use all commercially reasonable measures to overcome or minimize any delay arising from such force majeure event and the other Party will reasonably collaborate in this process.

11. Insurance / Indemnification / Safety. The insurance / indemnification / and safety requirements are incorporated herein and attached to the Agreement.

12. Notices. All notices under this Agreement shall be in writing, and shall be sufficient in all respects if delivered or sent by registered mail or given by electronic communication (or such other form as the parties may mutually agree to in writing) addressed to:

Cooperative:

Executive Director or Designee
Polk Regional Water Cooperative
330 West Church Street
Bartow, Florida 33831-9005
c/o County Attorney
Phone: (863)248-7388

Contractor:

Brandon Holst
Florida Design Drilling, LLC
7733 Hooper Road
West Palm Beach, FL 33411
Phone: (561)568-1231

13. Governing Law and Disputes. The terms of this Agreement shall be governed and construed in accordance with laws of the State of Florida with the venue for any actions being the Florida 10th Judicial Circuit Polk County Florida or the United States District Court in and for the Middle District of Florida, Tampa Division. Any dispute, claim, or controversy arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement that cannot be readily resolved, it shall be referred to the appropriate executives of the Contractor and Cooperative for negotiation and resolution as described below:

- (a) Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties who have not previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved by these persons within thirty (30) days of the disputing Party's notice, or if the Parties fail to meet within ten (10) days, the dispute shall be referred to senior executives of both Parties who have authority to settle the dispute and who shall likewise meet to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to senior executives or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may initiate mediation as provided herein.
- (b) All negotiations pursuant to this Article 13 shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and State Rules of Evidence.
- (c) If the dispute has not been resolved by negotiation as provided herein, the Parties shall endeavor to settle the dispute by mediation. Either Party may initiate mediation proceedings by a request in writing to the other Party. Thereupon, both Parties will be obligated to engage in mediation. The proceeding will be conducted in accordance with the then current CPR International Institute for Conflict Prevention & Resolution CPR Mediation Procedure, with the following exceptions:
 - i. If the Parties have not agreed within thirty (30) days of the request for mediation on the selection of a mediator willing to serve, the CPR, upon the request of either Party, shall appoint a member of the CPR Panels on Neutrals as the mediator; and
 - ii. Efforts to reach a settlement will continue until the conclusion of the proceeding, which is deemed to occur when: (a) a written settlement is reached, or (b) the mediator concludes and informs the Parties in writing that further efforts would not be useful, or (c) the Parties agree in writing that an impasse has been reached. Neither Party may withdraw before the conclusion of the proceeding.

- iii. The Parties regard the aforesaid obligation to mediate as an essential provision of this Agreement and one that is legally binding on them. In case of a violation of such obligation by either Party, the other may bring an action to seek enforcement of such obligation in any court of law having jurisdiction thereof.
- iv. If the dispute has not been resolved by negotiation or mediation as provided herein within one hundred twenty (120) days of the initiation of such mediation procedure, either Party may initiate litigation upon ten (10) days' written notice to the other Party; provided, however, that if one Party has requested the other to participate in a non-binding procedure, as provided for under this Article, and the other has failed to participate, the requesting Party may initiate litigation before the expiration of the above period.
 - (d) The procedures specified in this article shall be the sole and exclusive procedures for the resolution of disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may seek a preliminary injunction or other provisional judicial relief if, in its reasonable judgment, such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the Parties will continue to participate in good faith in the procedures.
 - (e) Performance under this Agreement shall continue during dispute resolution proceedings. No payment due or payable by Cooperative shall be withheld on account of a pending reference to the settlement of a dispute. All undisputed amounts must continue to be paid and accepted in the manner specified..

14. Assignment. Except as may be expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the successors of the Parties hereto. Neither Party may assign this Agreement without the written consent of the other Party, in whole or in part. Any purported assignment or delegation, without such consent, shall be void and shall automatically invest the right to terminate or cancel this Agreement.

15. Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute the executed Agreement, and each of which shall be considered an original of the Agreement.

16. Public Records. The parties acknowledge that the Cooperative is an independent special district under the laws of the State of Florida and subject to the Florida Public Records Law.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT: RECORDS MANAGEMENT LIASON OFFICER, POLK COUNTY, 330 WEST CHURCH ST, BARTOW, FL 33830, TELEPHONE: (863) 534-7527, EMAIL: RMLO@POLK-COUNTY.NET

In accordance with Florida Statute §119.0701, the Contractor shall keep and maintain public records required by the Cooperative in the performance of services pursuant to this Agreement. Upon request from the Cooperative's Custodian of public records shall provide the Cooperative 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 pursuant to Florida Statute Chapter 119 or as otherwise provided by law.

The Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the Contractor does not transfer the records to the Cooperative. The Contractor shall, upon completion of this Agreement will, transfer, at no cost, to the Cooperative all public records in possession of the Contractor or keep and maintain public records required by the Cooperative to perform services pursuant to this Agreement. If the Contractor transfers all public records to the Cooperative upon completion of this Agreement, then the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Cooperative, upon request from the Cooperative's Custodian of public records in a format that is compatible with the information technology systems of the Cooperative.

17. Statutory Provisions. This Agreement includes compliance with public crimes in accordance with Chapter 287.133 (2)(a) Florida Statutes, and discriminatory vendors in accordance with Chapter 287.134 (2) (a) Florida Statutes with the agreement that Chapter 112.061 Florida Statutes be controlling in the event of a conflict with this Agreement.

18. Discrimination. Pursuant to Subsection 287.134(2)(a), 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.

19. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on 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 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 grantee, 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 36 months following the date of being placed on the convicted vendor list.

20. E-VERIFY Compliance. The Contractor shall comply with Chapter 448 Florida Statutes, and with more particularity with Chapter 448.095 Florida Statutes and all applicable federal and local provisions. The Contractor shall verify a person's employment eligibility by using the E-Verify system. Employees whose eligibility to work in the United States cannot be verified through E-Verify shall be removed from the project. This requirement is inclusive of the Contractor, General Contractors, and all subcontractors.

21. Drug Free Workplace. CONTRACTOR shall comply with the Florida Drug-Free Work Place Act set forth in Chapter 112.0445 Florida Statutes. The Contractor shall not let an employee work if suspected of being under the influence of drugs or alcohol, and if the Cooperative believes that an employee of the Contractor or any other person the Contractor brings on site is under the influence of drugs and/or alcohol, the Cooperative will bring the matter to the Contractor's attention and the Contractor must take action in accordance with Chapter 112.0445 Florida Statutes.

22. Federal Lobbying Restrictions. The Cooperative will be a recipient of federal financial assistance with regards to the Project. Recipients of federal financial assistance may not pay any person for influencing or attempting to influencing any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for the United States Environmental Protection Agency (USEPA) in 40 CFR 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Within 30 days of the execution of this Contract, the Contractor shall complete and submit to the Cooperative the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34. The Contractor shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

23. Telecommunications Prohibitions. The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), at Section 889 prohibits USEPA financial assistance recipients, including WIFIA borrowers, from expending loan funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial component of any system, or as critical technology as part of any system. Consequently, the Contractor is prohibited from extending or renewing a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunication equipment or services as a substantial component of any system, or as a critical technology as part of any system with regards to the Project. As described in the Act, "covered telecommunications equipment or services means:

(a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(b) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(c) Telecommunications or video surveillance services provided by such entities or using such equipment.

(d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government or a covered foreign country.

The Act does not prohibit:

(a) Procuring with an entity to provide a service that connects to the facilities of a third party, such as backhaul, roaming, or interconnection arrangements.

(b) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data packets that such equipment transmits or otherwise handles.

24. No Construction Against the Drafter. The Parties acknowledge that this Agreement and all the terms and conditions contained herein have been fully reviewed and negotiated by the Parties. Having acknowledged the foregoing, the Parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the agreement shall have no application to the terms and conditions of this Agreement.

24. Entirety of Agreement. This Agreement together with any attachments of exhibits attached hereto constitutes the entire agreement of the Parties hereto and supersedes all prior agreements, letters of intent, and understandings, both written and oral, among the Parties with respect to the subject matter hereof. There are no representations or warranties, agreements, or covenants other than those expressly set forth or referred to in this Agreement. No amendment to this Agreement shall be valid unless made in writing and signed by an authorized representative of both Parties.

25. Severability. If any of the provisions or portions or applications of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment in the provisions of this Agreement to maintain the purpose of this Agreement and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

26. References and Titles. All references in this Agreement to Exhibits, Schedules, Articles, Sections, subsections, and other subdivisions refer to the corresponding Exhibits, Schedules, Articles, Sections, subsections, and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any Articles, Sections, subsections, or other subdivisions of this Agreement are for convenience only, do not constitute any part of such Articles, Sections, subsections, or other subdivisions, and shall be disregarded in construing the language contained therein. The words "this Agreement," "herein," "hereby," "hereunder," "and hereof," and words of similar import, refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The words "this Section," "this subsection," and words of similar import, refer only to the Sections or subsections hereof in which such words occur. The word "or" is not exclusive, and the word "including" (in its various forms) means "including without limitation." Pronouns in masculine, feminine, or neuter genders shall be construed to state and include any other gender, and words, terms, and titles (including terms defined in this Agreement) in the singular form shall be construed to include the plural and vice versa unless the context otherwise expressly requires. Unless the context otherwise requires, all defined terms contained in this Agreement shall include the singular and plural and the conjunctive and disjunctive forms of such defined terms. In construing this Agreement, no consideration shall be given to the fact or presumption that any of the parties had a greater or lesser hand in drafting this Agreement.

(Signatures Continue on the Next Page)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated by each signature.

SOUTHEAST PROJECT BOARD of the POLK REGIONAL WATER COOPERATIVE, an independent special district of the State of Florida

ATTEST:

By: _____
Secretary

By: _____
Chair

Date Signed by Chair: _____

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

Edward de la Parte, Legal Counsel

WEST POLK PROJECT BOARD of the POLK REGIONAL WATER COOPERATIVE, an independent special district of the State of Florida

ATTEST:

By: _____
Secretary

By: _____
Chair

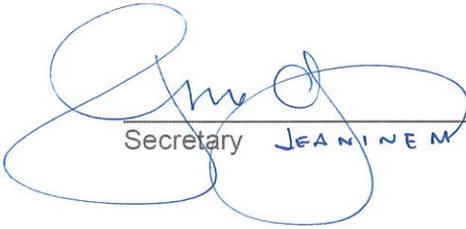
Date Signed by Chair: _____

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

Edward de la Parte, Legal Counsel

ATTEST:

Florida Design Drilling
A Florida Limited Liability Company


Secretary JEANINE M ALFIERI


Michael Black, Vice President

Date Signed: 8/19/24

Contractor's License Number 11148

4. INSURANCE AND SAFETY REQUIREMENTS

4.1. STATEMENT OF PURPOSE

The City of Lakeland (the "City") from time to time enters into agreements, leases and other contracts with Other Parties (as hereinafter defined).

Such Agreements shall contain at a minimum risk management/insurance term to protect the City's interests and to minimize its potential liabilities. Accordingly, the following minimum requirements shall apply:

4.2. CITY DEFINED

The term City (wherever it may appear) is defined to mean the City of Lakeland itself, its Commission, employees, volunteers, representatives and agents.

4.3. OTHER PARTY DEFINED

The term Other Party (wherever it may appear) is defined to mean the other person or entity which is the counter-party to the Agreement with the City and any of such Other Party's subsidiaries, affiliates, officers, employees, volunteers, representatives, agents, contractors and subcontractors.

4.4. LOSS CONTROL/SAFETY

Precaution shall be exercised at all times by the Other Party for the protection of all persons, including employees, and property. The Other Party shall comply with all laws, rules, regulations or ordinances related to safety and health, and shall make special effort to anticipate and detect hazardous conditions and shall take such precautionary and prompt action where loss control/safety measures should reasonably be expected.

The City may order work to be stopped at any time, without liability, if conditions exist that present immediate danger to persons or property. The Other Party acknowledges that such stoppage, or failure to stop, will not shift responsibility for any damages from the Other Party to the City.

4.5. INSURANCE - BASIC COVERAGES REQUIRED

The Other Party shall procure and maintain the following described insurance, except for coverage specifically waived by the City of Lakeland, on policies and with insurers acceptable to the City, and insurers with AM Best ratings of no less than A.

These insurance requirements shall in no way limit the liability of the Other Party. The City does not represent these minimum insurance requirements to be sufficient or adequate to protect the Other Party's interests or liabilities, but are merely minimums.

"Except for workers' compensation and professional liability, the Other Party's insurance policies shall be endorsed to name the **City of Lakeland as additional insured**. It is agreed that the Other Party's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by The City of Lakeland for liability arising out of the operations of this agreement."

Except for worker's compensation, the Other Party waives its right of recovery against the City, to the extent permitted by its insurance policies.

The Other Party's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by the City. They shall be reduced or eliminated at the option of the City. The Other Party is responsible for the amount of any deductible or self-insured retention.

Insurance required of the Other Party or any other insurance of the Other Party shall be considered primary, and insurance of the City shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of the City of Lakeland, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract, or lease.

4.6. [Commercial General Liability](#)

This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect the Other Party and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other than the Other Party's employees or damage to property of the City or others arising out of any act or omission of the Other Party or its agents, employees, or Subcontractors and to be inclusive of property damage resulting from explosion, collapse or underground (xcu) exposures. This policy shall also include protection against claims insured by usual personal injury liability coverage, and to insure the contractual liability assumed by the Other Party under the article entitled **INDEMNIFICATION**, and "**Products and Completed Operations**" coverage.

The Other Party is required to continue to purchase products and completed operations coverage for a minimum of three years beyond the City's acceptance of renovation or construction properties.

Bodily Injury and Property Damage -

Single limit each occurrence shall not be less than:\$5,000,000.00

4.7. [Business Automobile Liability](#)

Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

Bodily Injury and Property Damage -

Single limit each occurrence shall not be less than:\$1,000,000.00

4.8. [Workers' Compensation](#)

Workers' Compensation coverage to apply for all employees for statutory limits and shall include employer's liability with a limit of \$100,000 each accident, \$500,000 disease policy limits, \$100,000 disease limit each employee. ("All States" endorsement is required where applicable). If exempt from Worker's Compensation coverage, as defined in Florida Statue 440, the Other Party will provide a copy of State Workers' Compensation exemption.

All subcontractors shall be required to maintain Worker's Compensation.

The Other Party shall also purchase any other coverage required by law for the benefit of employees.

4.9. [Excess Liability](#)

This insurance shall protect the Other Party and the additional insured against all claims in excess of the limits provided under the employer's liability, commercial automobile liability, and commercial general liability policies. The policy shall be an "occurrence" type policy, and shall follow the form of the General and Automobile Liability.

The liability limits shall not be less than:\$10,000,000.00

4.10. [Contractors Pollution Liability](#)

which is a contractor base policy, which should be provided on an occurrence basis, Contractor Pollution Liability provides third-party coverage for bodily injury, property damage, defense, and cleanup as a result of pollution conditions (sudden/accidental and gradual) arising from contracting operations performed by or on behalf of the contractor.

OR

Environmental Impairment Liability

The Other Party shall be responsible for purchasing and maintaining environmental impairment liability insurance. This insurance should cover the following types of environmental impairment: Sudden and Accidental, and Gradual. **NOTE: If choosing Environmental Impairment Liability, the liability limits will be the same as Contractors Pollution Liability as listed below.**

The liability limits shall not be less than:\$1,000,000.00 or Environmental Impairment Liability

4.11. [Crane or Riggers Liability](#)

This insurance covers legal liability protection for the individual or business entity when acting as a rigger for the property of others in their care, custody and control.

The liability limits shall not be less than:\$1,000,000.00

4.12. [Professional Liability/Malpractice/Errors or Omissions Insurance](#)

The Other Party shall carry professional malpractice insurance throughout the term of this Contract and shall maintain such coverage for an extended period of three (3) years after completion and acceptance of any work performed hereunder. At all times throughout the period of required coverage, said coverage shall insure all claims accruing from the first date of the Contract through the expiration date of the last policy period. In the event that Other Party shall fail to secure and maintain such coverage,

Other Party shall be deemed the insurer of such professional malpractice and shall be responsible for all damages suffered by the City as a result thereof, including attorney's fees and costs.

The liability limits shall not be less than:\$5,000,000.00

4.13. EVIDENCE/CERTIFICATES OF INSURANCE

Required insurance shall be documented in Certificates of Insurance which provide that the City shall be notified at least 30 days in advance of cancellation, nonrenewable, or adverse change.

New Certificates of Insurance are to be provided to the City at least 15 days prior to coverage renewals.

If requested by the City, the Other Party shall furnish complete copies of the Other Party's insurance policies, forms and endorsements.

For Commercial General Liability coverage, the Other Party shall, at the option of the City, provide an indication of the amounts of claims payments or reserves chargeable to the aggregate amount of liability coverage.

Receipt of certificates or other documentation of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Other Party's obligation to fulfill the insurance requirements herein.

5. SPECIFICATION OF SAFETY AND OCCUPATIONAL HEALTH

City of Lakeland project representatives who assume responsibility for contract management will be responsible for ensuring compliance with these safety requirements by all Contractors and Subcontractors.

5.1. General

- A. All contractors are responsible for providing their employees with a safe and healthful working environment as required the Occupational Health and Safety (OSH) Act of 1970 and the Occupational Safety and Health Administration (OSHA) standards. Therefore, the contractor and their employees are responsible for following OSHA standards, applicable state regulations, and the City of Lakeland Safety Practices and Policies.
- B. The City of Lakeland's Safety Team and City management reserve the right to STOP work for any condition found to be Immediately Dangerous to Life and Health (IDLH). The contractor is solely and exclusively responsible for compliance with all safety requirements and the safety of all their employees and property on the project site. Note: Nothing in this requirement is to be construed to as removing or shifting responsibility from the contractor.
- C. The parties hereto expressly agree that the obligation to comply with applicable safety provisions is a material provision of this Contract and a duty of the Contractor. The City reserves the right to require demonstration of compliance with the safety provisions of this Contract. The parties agree that such failure is deemed to be a material breach of this Agreement. The Contractor agrees upon such breach, all work under the Contract shall terminate until compliance with the provision of this Agreement is demonstrated. In no event shall action or failure to act on the part of the City be construed as a duty to enforce the safety provisions of this Agreement, nor shall it be construed to create liability for the City for any act or failure to act in respect to the safety provisions of this Agreement.

5.2. Personal Protective Equipment (PPE) (OSHA 29CFR§1910 Subpart I)

It is the contractor's sole responsibility to provide adequate PPE for their employees. Additionally, the contractor is responsible for training their employees in the proper selection, maintenance, use of PPE. Minimal PPE requirements on City of Lakeland worksites:

- A. Foot protection must meet ANSI Z41.1-1999 standards and worn on all City properties.
- B. Head protection must meet ANSI Z89.1-1986 standards and worn in all areas except office buildings and office trailers.
- C. Eye and face protection must meet ANSI Z87.1-1989 standards and worn in all areas except office buildings and office trailers.
- D. Hand and Arm Protection must meet OSHA 29CFR§1910.138 requirements for proper selection, inspection, and care.

- E. Hearing Protection must meet ANSI S3.19-74, OSHA 29CFR§1910.95(j) and 29CFR§1910.95 Appendix: B requirements. Hearing protection must be worn in areas where the noise level is over 85 dB

5.3. [Housekeeping](#)

It is the contractor's sole responsibility to keep the project work site clean during and after working hours. Contractor shall supply waste receptacles for each site location. They shall be emptied not less frequently than once each working day, unless unused, and shall be maintained in a clean and sanitary condition. At the completion of the contract the contractor will ensure that all excess materials are removed from the work site and that the worksite is left clean and safe. If the contractor leaves a project work site unkept and in a hazardous condition; the City will have the area cleaned and forward the bill to the contractor.

5.4. [Smoking](#)

Smoking is permitted only in designated areas. Receptacle's must be used or waste removed in contractors' waste disposal container.

5.5. [Safety Kick-offs and Safety Stand-Downs](#)

A safety kick-off to disseminate safety expectations will be conducted before the project commences. Safety stand-downs will be conducted when major safety concerns, accidents, or near misses occur.

5.6. [Training Documentation](#)

OSHA requires documentation of all safety training provided to employees by their employers. Documentation of all required safety training required for work proposed for this contract must be submitted within thirty days of contract award or before commencement of contracted work. Please reference the Occupational Safety and Health Administration Requirements for details.

5.7. [Written Safety Programs or Plans](#)

Contractors awarded contracts with the City of Lakeland must, thirty days of contract award or before commencement of contracted work, provide the Risk Management Office written safety programs or plans. Please reference the requirements set forth in the Occupational Safety and Health Administration Requirements. The Risk Management Office will approve the submitted safety programs or plans as adequate to reduce risk of the work being performed.

5.8. [Supplemental #1: Construction Safety](#)

All contracted construction work will be performed per OSHA 29CFR§1926 standards, the contractor is responsible for ensuring that their employees are trained to and follow these OSHA standards. The City of Lakeland's Safety Team reserves the right to inspect all worksites and advise the contractor or their representatives on adjusting the work site, if needed.

A. PPE

The following PPE will be worn the entire time employees are on the worksite, including breaks and lunch:

Indemnification Contractor

To the fullest extent permitted by laws and regulations, and in consideration of the amount stated on any Purchase Order, the Contractor shall defend, indemnify, and hold harmless the City, its officers, directors, agents, guests, invitees, and employees from and against all liabilities, damages, losses, and costs, direct, indirect, or consequential (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising out of or resulting from any acts of negligence, gross negligence or intentional wrongful misconduct in the performance of the work by the Contractor, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable.

In any and all claims against the City, or any of its officers, directors, agents, or employees by any employee of the Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the City, the Contractor, or any of his Subcontractors. To the extent this Indemnification conflicts with any provision of Florida Law or Statute, this indemnification shall be deemed to be amended in such a manner as to be consistent with such Law or Statute.

Applicability: It is the express intent of the Contractor that this agreement shall apply for the project(s) or time period indicated below. (Check and complete one):

_____ **Agreement is applicable to all contracts, purchase orders and other work performed for the City of Lakeland for the time period of not more than five (5) years.**

_____ to _____
(Date) (Date)

(OR)

Agreement is limited to Bid #, Purchase Order #, Requisition # 2024-ITB-264, or Contract dated _____.

Subrogation: The Contractor and his Subcontractors agree by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Contractor or Subcontractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor or Subcontractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor or Subcontractor enter into such an agreement on a pre-loss basis.

Release of Liability: Acceptance by the Contractor of the last payment shall be a release to the City and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, or relating to the work, or for any act or neglect of the City or of any person relating to or affecting the work of which Contractor has knowledge at the time.

Savings Clause: The parties agree that to the extent the written terms of this Indemnification conflict with any provisions of Florida laws or statutes, in particular Sections 725.06 and 725.08 of the Florida Statutes, the written terms of this indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in full and complete compliance with all such laws or statutes and to contain such limiting conditions, or limitations of liability, or to not contain any unenforceable, or prohibited term or terms, such that this Indemnification shall be enforceable in accordance with and to the greatest extent permitted by Florida Law.

Florida Design Drilling LLC

Name of Organization

BY:

Signature of Owner or Officer

mike@fldrilling.com

E-mail Address

STATE OF : Florida

(561) 844-2966

Organization Phone Number

COUNTY OF: Palm Beach

The foregoing instrument was acknowledged before me, by means of physical presence, this 10th day of July, 2024.

by Michael Black, of Florida Design Drilling LLC.
Printed Name of Owner / Officer Corporate or Company Name

He/She is personally known to me or has produced _____ as
State Drivers License Number

identification, and did X / did not _____ take an oath.

Michael Black
Signature of Person Taking Acknowledgment

Michael Black
Printed Name of Person Taking Acknowledgment



Michael Perez
Notary Seal

POLK REGIONAL WATER COOPERATIVE

BY: _____
Eric DeHaven, Executive Director

DATE _____