

**AGREEMENT TO PROVIDE SERVICES FOR CONSTRUCTION ASSOCIATED WITH
STORMWATER IMPROVEMENTS FOR THE SOUTHERN OUTFALL PIPE
REPLACEMENT PROEJCT**

This agreement for the provision of stormwater improvements for the Southern Outfall Pipe Replacement Project ("Agreement") is made and entered into this _____20th day of March 2024, by and between the Town of Lake Park, a municipal corporation of the state of Florida, having an address of 535 Park Avenue, Lake Park, Florida, 33403 ("Town") and Foster Marine Contractors, Inc., 3180 Fairlane Farms Road, Suite 1, Wellington, Florida 33414 ("Contractor").

WITNESSETH THAT:

WHEREAS, the Town is a municipality with such powers and authority as is enumerated by Chapter 166 Florida Statutes and the Florida Constitution; and

WHEREAS, the Town desires to implement sustainable strategies that will improve the quality of life and safety of residents and visitors in the town; and

WHEREAS, the Town previously determined that its storm-water infrastructure lacks capacity and, among other things, there is a need to implement drainage system improvements at Southern Outfall Pipe Replacement (the "Project"); and

WHEREAS, on February 8, 2022, the Town was awarded a Rebuild Florida Mitigation General Infrastructure Program Grant by the State of Florida, Department of Economic Opportunity, in an amount of \$11,067,635.00 to retrofit storm sewer systems using low-impact green infrastructure; and

WHEREAS, on December 11, 2023, the Town's Public Works Department staff advertised and solicited bids from pre-qualified contractors for the Southern Outfall Pipe Replacement Project via an Invitation to Bid No. 125-2023 (the "ITB"); and

WHEREAS, the Town received three responses to its ITB, and after evaluation and analysis, the Town staff determined that the Contractor, Foster Marine Contractors, Inc. (the "Contractor") represented itself to be a qualified, able, and willing to satisfactorily provide the work requirements and services solicited in the ITB; and

WHEREAS, the Contractor's response to the ITB was determined by the Town Manager to be responsive and responsible to all requirements included in the ITB; and

WHEREAS, the Town Manager has recommended to the Town Commission that the Town enter into this Agreement with the Contractor, for the Project; and

NOW, THEREFORE, the Town and the Contractor in consideration of the benefits flowing from each to the other do hereby agree as follows:

1. INCORPORATION

The above stated recitals are true and correct, and are incorporated herein.

2. CONTRACT PRICE

This term of the Agreement shall begin as of the date of the Town’s issuance of a Notice to Proceed to the Contractor.

The contract price for the Project shall not exceed:

Base Bid Amount:	\$3,450,696.30
Plus, Alternate #1:	\$ Not Accepted
Plus, Alternate #2:	<u>\$ Not Accepted</u>
Total Bid Amount:	\$3,450,696.30

- Total Bid Amount pricing based on corrections made to bid submittal pricing.

3. COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor shall comply with all laws, ordinances, building code requirements and regulations applicable to provide the goods or services specified in this solicitation. The Contractor shall comply with all federal, state, and local laws in the performance of this Agreement including but not limited to all provisions of Appendix II to Part 200 of the code of Federal Regulations.

4. LICENSES, PERMITS AND FEES

The Contractor shall hold and maintain all licenses and/or certifications necessary to perform the construction work and services for the Project. Any damages, penalties, and/or fines which may be incurred by or imposed on the Town or Contractor for the Contractor’s failure to obtain and maintain any required licenses, certifications, permits, and/or inspections shall be solely the responsibility of the Contractor.

5. SUBCONTRACTORS

The Contractor shall provide to the Town a list of subcontractors the Contractor may be using to complete any work on the Project. If subcontracts are to be used, then Contractor shall take the affirmative steps to ensure M/WBE’s are used when possible.

6. ASSIGNMENT

The Contractor shall not assign or transfer the Agreement, including any rights, title, or interest therein, or its power to perform the construction and/or services of this Agreement to any person, company, or corporation without the prior written consent of the Town. The Town may terminate the Agreement in the event the Contractor has not obtained the Town’s prior written consent.

7. RESPONSIBILITIES OF THE CONTRACTOR AS THE EMPLOYER

The employees of the Contractor shall be considered to be at all times its employees, and not an employees or agents of the Town. The Contractor shall provide physically competent employees capable of performing the work and licensed or certified as may be necessary to perform the construction and services associated with the Project. The Town may require the Contractor to remove any employee the Town deems to be unacceptable. All employees of the Contractor shall wear proper identification at all times while on Town properties.

The Contractor shall ensure that all its employees and any approved subcontractors comply with the employment regulations required by the United States Department of Homeland Security. The Town shall have no responsibility to check or verify the legal immigration status of any employee of the Contractor.

8. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the Town, and its elected and appointed officers, employees, and agents from any and all liability, losses, or damages, including attorney's fees and costs of defense, which the Town or its elected or appointed officers, employees, or agents may incur as a result of any claims, fees, demands suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the Agreement by the Contractor or its employees, agents, servants, partners, principals, subcontractors, or anyone authorized to act on Contractor's behalf. The Contractor shall be solely responsible for paying any and all claims and losses, or fees in connection therewith, and for the investigation and defense of all claims, suits, or actions of any kind or nature against the Town, for its negligence, act or omission, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit its responsibility to indemnify, keep and save harmless, and to defend the Town, its elected and appointed officers, employees, and agents.

The Contractor shall have and maintain during the term of the Agreement, insurance coverage to be issued by an insurance company authorized, licensed, and registered to do business in the state of Florida, with a minimum rating of B+ or better, in accordance with the latest edition of A.M. Best's Insurance Guide. This insurance shall be documented in certificates of insurance which provides that the Town shall be notified at least 30 days in advance of cancellation, non-renewal, or adverse change. The receipt of certificates of insurance, including if requested by the Town policies or copies of policies by the Town or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of the selected Contractor's obligation to fulfill the insurance requirements herein. Deductibles must be acceptable to the Town.

The Contractor shall submit a current Certificate of Insurance, naming the Town as an additional insured and listing the Town as such on the insurance certificate. New

certificates of insurance shall be provided to the Town upon the lapse, termination or expiration of any of the required insurance coverages listed below:

Contractor shall provide insurance coverage as follows:

- a. WORKERS' COMPENSATION INSURANCE in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$100,000 for each accident, not less than \$100,000 for each disease, and not less than \$500,000 aggregate.
- b. GENERAL LIABILITY INSURANCE with each occurrence limits of not less than \$1,000,000.
- c. PROFESSIONAL LIABILITY INSURANCE with limits of not less than \$1,000,000 annual aggregate.
- d. HIRED AND NON-HIRED VEHICLES with limits of not less than \$500,000 per claim.

9. TERM/TIME FOR PERFORMANCE

The number of days within which, or the date by which, the work is to be completed (the time for performance) shall be 360 calendar days from the date of the Town's issuance of a notice to proceed until the Town has determined that there has been substantial completion of the Project; and then an additional 45 days to be measured beginning upon the date the Town determines there has been substantial completion to final completion, for a total contract time of 405 calendar days.

10. LIQUIDATED DAMAGES

In the event the Contractor does not achieve substantial completion, or final completion of the Project within provisions of the times for performance set forth hereinabove, the parties agree that the Town may assess liquidated damages of \$150 per day until the Contractor achieves substantial completion or final completion, or if applicable, both.

11. CONSTRUCTION BOND

Contractor shall file with the Town, a Public Construction Bond, both payment and performance bonds, for the full amount (100%) of the Contract Price in accordance with the requirements of Florida Statutes 255.05, as amended, as security for the faithful performance of the Agreement and the payment of all persons supplying labor and materials for the services and construction associated with the Project, and to cover all guarantees against defective workmanship or materials, or both, during the warranty period following the date of final acceptance of the Project by the Town.

The Surety furnishing this bond shall have a sound financial standing and a record of service satisfactory to the TOWN and shall be authorized to do business in the State of Florida. The Surety shall be an entity included in the most recent United States Department of Treasury list of acceptable sureties. The Surety shall use the bond form contained in the bid package.

12. MODIFICATION OF AGREEMENT

The Agreement may only be modified by the mutual consent, as evidenced by a written amendment to the Agreement.

13. TERMINATION FOR CONVENIENCE

The Town, at its sole discretion, reserves the right to terminate this Agreement for convenience and without cause upon providing 60 days' advance written notice to the Contractor. Upon receipt of such notice, the Contractor shall not continue with construction or provide the services unless the Town shall have provided a written re-authorization.

14. TERMINATION BY CONTRACTOR

The Contractor may terminate the Agreement before the expiration of the Term provided it gives a 90-day written notice of its intention to do so. In the event of termination by Contractor, the Town may procure the required goods and/or services from any source and use any method deemed in its best interest to provide construction and services to complete the Project. In the event of early termination, the Contractor agrees that it shall be responsible for the Town's re-procurement costs.

15. ACCESS AND AUDIT OF RECORDS

The Town reserves the right to require the Contractor to submit to an audit by an auditor of the Town's choosing at the Contractor's expense of its records, which relate directly or indirectly to this Agreement, at its place of business during regular business hours, or at such other places as mutually agreed to by the Town and Contractor.

The Contractor shall retain all records pertaining to this Agreement, and upon request, make them available to the Town for six (6) years following expiration of the Agreement. The Contractor agrees to provide such assistance as may be necessary to facilitate the review or audit by the Town to ensure compliance with applicable accounting and financial standards.

16. OFFICE OF THE INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General ("OIG"), which is authorized and empowered to review past, present, and proposed Town programs, contracts, transactions, accounts, and records. The OIG has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and programs. The OIG may, on a random basis, perform audits on all Town contracts.

17. BINDING EFFECT

All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and authorized assigns.

18. SEVERABILITY

If any part of this Agreement is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

19. GOVERNING LAW AND VENUE

The Agreement shall be governed by the laws of the State of Florida. Venue of all proceedings in connection with the Agreement shall lie exclusively in Palm Beach County, Florida.

20. ATTORNEY'S FEES

If either party is required to initiate a legal action, including appeals, to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

21. EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION

The Town complies with all laws of prohibiting discrimination on the basis of age, race, gender, religion, creed, political affiliation, sexual orientation, physical or mental disability, color or national origin, and therefore is committed to assuring equal opportunity in the award of contracts and encourages small, local, minority and female-owned businesses to participate.

During the performance of this Agreement, Contractor shall not discriminate or permit discrimination in its hiring practices or in its performance of the Agreement. The Contractor shall strictly adhere to the equal employment opportunity requirements and any applicable requirements established by the Town, the state of Florida, Palm Beach County and the federal government.

Contractor shall make effort to implement Section 3 employment as per requirements of 24CFR Part 75.27.

The Contractor further acknowledges and agrees to provide the Town with any and all information and documentation that may be requested by the Town from time to time regarding the solicitation, selection, treatment, and payment of approved subcontractors, suppliers, and vendors in connection with this Agreement.

22. NO DISCRIMINATION CLAUSE

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin age pregnancy, handicap or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following:

employment, up-grading, demotion, or transfer, recruitment or recruitment advertising; layout or termination; rates of pay or other forms of compensation, and selection of training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

23. MINIMUM WAGE REQUIREMENTS

The Contractor shall comply with all minimum wage requirements, such as Living Wage requirements, minimum wages based on federal law, minimum wages based on the Davis-Bacon Act, and the provisions of any other employment laws, as may be applicable to this Agreement.

Contractor, and its approved subcontractors shall provide weekly certified payrolls with a signed statement of compliance in the proper format and on the proper forms.

The wage decision applicable to this Project as of the date of the Agreement's execution by the parties is:

General Decision Number: **FL20220130 09/30/2022**
Superseded General Decision Number FL20210130
State: **Florida**
Construction Type: **Heavy**
County: **Palm Beach County in Florida**

24. JOBSITE POSTING REQUIREMENTS

As required covered by the standards of the Davis Bacon Act and any related laws, the Contractor shall post wage compliant notification posters at the site of the Project in a prominent and accessible place where it may be easily seen by employees.

The notification poster shall include, but is not limited to: WH-1312 Poster; / a copy of the applicable Wage Decision; / Workers Rights Poster / Contractors Contact information.

25. CODE OF FEDERAL REGULATIONS

Contractor shall comply with 29 CFR 5.5 (see Attachment 3 of this Agreement)

Title 29 – Labor Subtitle A – Office of the Secretary of Labor

Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.

5.5 – Contract Provisions and related matters.

26. PUBLIC RECORDS

The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- a. Keep and maintain public records required by the Town to perform the service for a period of six (6) years.

- b. Upon the request of the Town's custodian of public records, provided the Town with such public records within a reasonable time at a cost that does not exceed the costs provided for in Chapter 119, Florida Statutes.
- c. Ensure that any public records that are exempt or confidential from public records disclosure are not disclosed except as authorized by law for the duration of the term of this Agreement, and following completion of this Agreement if the Contactor does not transfer the records which are part of this Agreement to the Town.
- d. Upon the completion of the term of the Agreement, transfer, at no cost, to the Town all public records in possession of the Contactor; or keep and maintain the public records associated with the services provided for in the Agreement. If the Contactor transfers all public records to the Town upon completion of the term of the Agreement, the Contactor shall destroy any duplicate public records that are exempt of confidential from public records disclosure. If the Contractor keeps and maintains public records upon completion of the term of the Agreement, the Contractor shall meet all applicable requirements pertaining to the retention of public records. All records stored electronically shall be provided to the Town, upon request from the Towns custodian of public records, in a format that is compatible with the information technology systems of the Town.
- e. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTACTOR SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: TOWN CLERK, 535 Park Avenue, Lake Park, Florida 33403, 561-881-3311, Townclerk@lakeparkflorida.gov.

27. SCOPE OF WORK

The Project Objective is described as follows: Storm-water modeling has indicated that the Town's southern storm-water collection system is under significant loading during moderate to high intensity storm events and can potentially produce surcharge flooding up-stream from the southern outfall discharge. The Southern Outfall which is located along a historical ditch draining west to east along the Town's southern boundary, is the primary drainage relief trunk for 48% of the Town's storm-water collection area. The ditch was later replaced with a storm-water piping system that has now reached the end of its useful life. The aging infrastructure coupled with

the pressures of development and sea-level rise has led to the need for a replacement and improvement of this section of the storm-water system.

The Contractor shall furnish all labor, materials, tools and equipment required to construct and install the storm-water improvements as per the engineered design drawings as prepared by Baxter & Woodman Consulting Engineers, including supporting documents.

The Project Scope described as follows: The Southern Outfall Pipe Replacement project consists of the removal of the existing 72" corrugated underground storm-water piping and the installation of two (2), 60" precast concrete storm-water piping. The project also includes a "first flush" water quality element to capture and treat the initial flow of storm-water run-off.

The scope of work requires the Contractor to submit to the owner material submittals, and a project schedule for approval before construction commencement.

Additionally, the Contractor shall provide on-site management of day-to-day operations and coordination with project related agencies. Finally, the Contractor shall submit final close-out project documents as required by the Town and by Florida Commerce, the projects grant agency; these close-out documents shall include, but not limited to project as, permit closeout documents, project testing reports, as-built survey construction documents, and project warranty information.

The below listed attachments are relevant documents to be included as part of this Agreement:

- | | |
|---------------|--|
| Attachment 1: | Invitation to Bid (ITB) No. 125-2023
<i>Southern Outfall Bid Documents</i>
<i>Including Project Plans, Technical Specifications, Geotechnical Reports, General Conditions, Seacoast Utility Authority Specifications, Bid Form Documents, Schedule of Values, Copy of Florida Commerce Grant Agreement with the Town of Lake Park, Applicable Davis Bacon Wage Decision, Exhibits A thru I and Addendum #1 thru #4 associated with this ITB.</i> |
| Attachment 2: | Foster Marine Contractors, Inc. Bid Response Proposal to ITB No. 125-2023 as submitted on Friday, February 16, 2023 at 2:00 pm. |
| Attachment 3: | Code of Federal Regulations (CFR) - 29 CFR 5.5 |
| Attachment 4: | Davis Bacon Wage Decision Number: FL20220130 09/30/2022 |

IN WITNESS WHEREOF, the parties hereto have made and execute this Agreement as of the day and year last execute below.

ATTEST:

TOWN OF LAKE PARK

By: _____
Vivian Mendez, TOWN Clerk

By: _____
Roger D. Michaud, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Thomas J. Baird, Town Attorney

Foster Marine Contractors, Inc.
3180 Fairlane Farms Road, Suite 1
Wellington, Florida 33414

By: MM
Signature

Its: President
Title

Michael Czajkowski
Printed Name

