



Pinellas County

Staff Report

File #: 23-0688D, **Version:** 1

Agenda Date: 12/31/2023

Subject:

Confidential Settlement Agreement with Kimley-Horn for PIE Runway 18-36, Taxiways G, G1, and F.

Recommended Action:

Approval and execution by the County Administrator of Settlement Agreement with Kimley-Horn for the deposit of \$50,000.00 as final payment for PIE Runway 18-36, Taxiways G, G1, and F.

- The St. Pete-Clearwater International Airport requested an emergency agreement with Ajax to perform construction to correct a design error affecting the longitudinal profile of Runway 18-36 committed by the engineering firm, Kimley-Horn & Associates, Inc. (Kimley-Horn). The approval of the agreement with Kimley-Horn (Legistar No. 22-1007D) was concurrent with the approval of the agreement with Ajax.
- This settlement agreement is for the approval of the release for Kimley-Horn. Once the attached agreement is signed, Kimley-Horn will deposit \$50,000 into the holding account as final payment for this work. This is final payment and does not represent an additional amount.
- Kimley-Horn was responsible for paying all costs associated with construction of these repairs by depositing funds into a receivable account created by Clerk's Finance for the County to make payment to Ajax for completing this work. Ajax is the original contractor who completed the work as required under prior contract no. 189-0334-CP. Kimley-Horn erred in the design process.
- Funds will be receipted to Project 000035A Runway 18/36 Rehabilitation Airport, budgeted in the Capital Improvement Plan, within the Airport Revenue and Operating Fund.
- This agreement will have a positive fiscal impact upon the Airport capital funds in the amount of \$50,000.

Contract No. 22-0650-E is for a not to exceed amount of \$2,322,396.21. No additional funding required as part of the settlement agreement which represents a release with final payment.

Strategic Plan:

Deliver First Class Services to the Public and Our Customers

5.2 Be responsible stewards of the public's resources

5.3 Ensure effective and efficient delivery of county services and support

Summary:

This agreement represents the approval of the release for Kimley-Horn. Once the attached Settlement Agreement is fully executed, Kimley-Horn will deposit \$50,000 into the holding account as final payment for this work.

Background/Explanation:

The airport selected Kimley Horn as the designer for the Runway 18-36 Pavement Rehabilitation

project in July 2018. The project was advertised for construction in May 2019. The bids were received in June 2019 and Ajax Paving Industries of Florida, LLC (Ajax) was the lowest bidder. The project was awarded to Ajax by the BOCC on October 8, 2019. Notice to proceed was issued October 31, 2019. Substantial completion was reached in March of 2021 and the airport resumed operational use of this primary runway.

Shortly after operations commenced, some of the long-haul air carriers began noticing a “bump” during take-off. Upon further review, it was decided that corrective action was needed to the pavement to mitigate this safety issue. Kimley Horn acknowledge that there were some inefficiencies in their design plans and agreed to cover the cost of the corrective action. (i.e. Design and construction management services, quality assurance testing, and actual construction costs). Ajax, as the contractor for this project, agreed to perform this corrective action.

An emergency agreement (File # 22-1844A) was issued in November 2022 to proceed with this correction action using Ajax as the contractor, (using the same terms and conditions of their original agreement), and Kimley Horn would deposit the necessary money into an account provided by the County so that the County could pay Ajax’s monthly pay requests.

The corrective action is basically complete other than a few punch list items.

Kimley Horn has requested a full release from the terms of this agreement with their final payment of \$50,000.00.

Fiscal Impact:

Settlement Agreement is a full release from the terms of emergency agreement due to design errors with a final payment of \$50,000.00.

Total not to exceed as previously approved: \$2,322,396.21

Funds will be receipted to Project 000035A Runway 18/36 Rehabilitation Airport, budgeted in the Capital Improvement Plan, within the Airport Revenue and Operating Fund.

Delegated Authority:

Authority for the County Administrator to approve and execute this settlement agreement is granted under Code Section 2-62 (a)(1).

Staff Member Responsible:

Thomas Jewsbury, Director, St. Pete-Clearwater International Airport
Merry Celeste, Division Director, Purchasing & Risk, Administrative Services
Joe Lauro, Director, Administrative Services

Partners:

N/A

Attachments:

Confidential Settlement Agreement

CONFIDENTIAL SETTLEMENT AGREEMENT

This Confidential Settlement Agreement (“Agreement”) is entered into by and between Pinellas County, a political subdivision of the State of Florida (“County”), and Kimley-Horn and Associates, Inc. (“Kimley- Horn”), (collectively referred to as “the Parties”). This Agreement is effective upon full execution.

1. FOR AND IN CONSIDERATION of the payment of the sum of Fifty Thousand Dollars and Zero Cents (\$50,000.00), the receipt of which is acknowledged, County, for itself and its affiliates and anyone claiming by, through, or under it, has released and discharged, and by these presents does release, acquit and forever discharge Kimley- Horn and Associates, Inc., and its employees, subconsultants, agents, insurers and affiliates of and from any and all known causes of action, claims, demands, damages, costs, and expenses, based on any theory of law or equity including claims for negligence, breach of contract, delay claims, lost profits, and consequential damages (“Claims”) which County now has, or hereafter may have, on account of, or in any way growing out of services provided by Kimley-Horn for the project known as PIE Runway 18-36, Taxiways G, G1, and F and any other pavement or facility at St. Pete-Clearwater International Airport (“Project”), including but not limited to Claims related to:

Damage to pavement and associated and ancillary improvements on Taxiways G and G1 at PIE.

2. County acknowledges and represents to Kimley-Horn that it has no knowledge of any actual or alleged errors or omissions of Kimley-Horn related to any services provided by it. County further acknowledges that Kimley-Horn did not prepare any design related information for Taxiway G1 and G. County acknowledges that the repair of Taxiways G1 and G are the only pavement sections that County is asking Kimley-Horn to contribute towards and that County is solely responsible for any other pavement repair, including but not limited to Taxiway F.

3. This Agreement constitutes a full and complete SETTLEMENT of doubtful and disputed claims, regardless of the adequacy of the consideration described above, and the payment described herein and the acceptance of this Agreement is not an admission of liability or wrongdoing on the part of the persons and entities hereby released.

4. This Agreement shall be governed by and shall be construed and enforced in accordance with the laws of the State of Florida.

5. To the extent provided by law, the Parties agree to keep the terms of this Agreement and all matters related to same, confidential. Any violation of this confidentiality clause shall be considered a breach of this Agreement.

6. This Agreement contains the entire agreement between the undersigned and the parties released hereby. This Agreement supersedes all previous agreements, settlements, and releases.

7. The persons signing the Agreement below represent and warrant that they have full authority to execute this Agreement on behalf of and bind the designated entity and that there has been no assignment or other transfer by County of any interest in the claims or matters released hereby.

Pinellas County

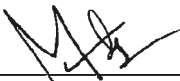
By:  _____

Name: Barry A. Burton

Title: Pinellas County Administrator

Date: September 27, 2023

Kimley-Horn and Associates, Inc

By:  _____

Name: Mudassar Alam, P.E.

Title: Senior Vice President

Date: 08/07/2023

APPROVED AS TO FORM

By: Michael A. Zas
Office of the County Attorney



Pinellas County

Staff Report

File #: 22-1844A, Version: 1

Agenda Date: 11/15/2022

Subject:

Ratification of the County Administrator's approval of the emergency agreement with Ajax Paving Industries of Florida, LLC, for Runway 18-36 Pavement Maintenance.

Recommended Action:

Ratify, confirm, and enter into the minutes approval by the County Administrator of the emergency agreement with Ajax Paving Industries of Florida, LLC (Ajax) for Runway 18-36 Pavement Maintenance.

- The St. Pete-Clearwater International Airport requested an emergency agreement with Ajax to perform construction to correct a design error effecting the longitudinal profile of Runway 18-36 committed by the engineering firm, Kimley-Horn & Associates, Inc. (Kimley-Horn). The approval of the agreement with Kimley-Horn (Legistar No. 22-1007D) was concurrent with the approval of the agreement with Ajax.
- Kimley-Horn will be responsible for paying all costs associated with the construction and construction phase services of this project by depositing funds into a receivable account created by Clerk Finance in order for the County to make payment to Ajax for completing this work. Ajax is the original contractor who completed the work as required under prior contract no. 189-0334-CP. Kimley-Horn erred in the design process.
- This emergency agreement was requested to expediate this work. Utilizing competition would be detrimental to the timely acquisition of goods and services. Total cost of this agreement is not to exceed \$2,322,396.21 for a duration of 180 days. Allegiant pilots have filed safety reports on this bumpy condition which led to the investigation.
- The County Administrator has delegated authority under Code Section 2-181(b)1 to approve this emergency purchase with receipt and file to the Board of County Commissioners. Staff requested approval under the emergency code due to the serious safety issue and timely acquisition of goods and services.

Contract No. 22-0650-E is for a not to exceed amount of \$2,322,396.21 for a duration of 180 days.

Strategic Plan:

Deliver First Class Services to the Public and Our Customers

5.2 Be responsible stewards of the public's resources

5.3 Ensure effective and efficient delivery of county services and support

Summary:

This emergency agreement with Ajax is to perform the construction necessary to correct the design error committed by Kimley-Horn. Ajax performed the original project work under contract no. 189-

0334-CP for the Runway 18-36 Rehabilitation project which expired February 22, 2022.

Kimley-Horn will be responsible for paying all costs associated with the construction and construction phase services of this project by depositing funds into a "perfect receivable account" created by Clerk's Finance in order for the County to make payment to Ajax for completing this work.

It is necessary to approve the agreement as an emergency to complete the work expeditiously and to allow the same vendor which started the original work to complete the emergency work.

Background Information:

St. Pete-Clearwater International Airport (PIE) completed the Runway 18-36 Pavement Rehabilitation project in the Spring of 2021. Although the contractor met all acceptance criteria per the contract documents during construction, it was noticed after the completion of the project that there was a portion of the longitudinal profile of the runway that did not meet the design criteria per the FAA Advisory Circular 150/5300-13B, Airport Design.

Ajax, the original contractor for the Runway 18-36 Rehabilitation project, has provided a cost estimate of \$2,322,396.21 for this work. This includes \$1,823,098.38 for the work related to the Runway 18-36 maintenance, and an additional \$499,297.83 for pavement rehabilitation to Taxiway "G", (parallel taxiway to Runway 4-22), should it be needed due to the impacts of placing air carrier operations on this taxiway after the work related to Runway 18-36 is completed (i.e., If no damage is done to Taxiway "G" during this project, this work will not be needed). All costs for this work will be borne by Kimley-Horn.

Fiscal Impact:

The total cost of this Agreement is \$2,322,396.21 (Agreement No. 22-0650-E, pg.1). Per the Agreement between Pinellas County and Kimley-Horn (Granicus Item: 22-1007D, Kimley-Horn Contract, Section 2B), Kimley-Horn hereby agrees that upon request by the County and based on the amount requested by Ajax in their monthly payment Apps/requests, they will send a payment equal to the requested and agreed upon amount into an account provided by the County. The County will use these funds to pay Ajax as a contractor during construction. Payments by Kimley-Horn will be made via wire transfer to the account provided by the County within ten (10) business days of mutual approval of the Contractor's pay request by the County and Kimley-Horn. As a result, no negative budgetary impacts are anticipated.

Staff Member Responsible:

Thomas Jewsbury, Director, St. Pete-Clearwater International Airport
Merry Celeste, Division Director, Purchasing & Risk, Administrative Services
Joe Lauro, Director, Administrative Services

Partners:

N/A

Attachments:

Agreement



TAMPA BAY THE EASY WAY

MEMORANDUM

TO: Mary Celeste, Pinellas County Purchasing Director

FROM: Thomas R. Jewsbury, Airport Director *T.R.J.*

DATE: August 15, 2022

SUBJECT: EMERGENCY - PIE Runway 18-36 Pavement Maintenance

St. Pete-Clearwater International Airport (PIE) completed the Runway 18-36 Rehabilitation project in the Spring of 2021. Although the contractor met all acceptance criteria per the Contract Documents during construction, it was noticed after the completion of the project that there was a portion of the longitudinal profile of the runway that did not meet the design criteria per the FAA Advisory Circular 150/5300-13B, Airport Design.

It was subsequently found that this design error was attributed to the design consultant of the project and would be subject to a potential claim against their Professional Liability Insurance coverage under their Agreement with the County. In this scenario, the County would seek reimbursement for all design and construction related costs associated with the required mitigation.

Fortunately, the design consultant agreed to cover all design and construction related costs and appropriate documents are being executed.

Ajax Paving Industries of Florida, LLC, (Ajax), the original contractor for the Runway 18-36 Rehabilitation project, has provided a cost estimate of \$2,322,396.21, (\$1,823,098.38 for the pavement maintenance work for Runway 18-36, and \$499,297.83 for maintenance work to Taxiway "G", should it be decided during field inspection that this work is needed due to impacts from air carrier aircraft during the closure of Runway 18-36), to perform this work to bring it in compliance with the FAA Advisory Circular. All costs of this work will be borne by the design consultant, including design, construction administration, quality control testing, inspection, project close-out, and other necessary tasks needed to complete this work.

The Airport requests approval of this emergency construction work to expeditiously bring the runway longitudinal alignment within design criteria.

The Airport also requests that this work be done without competition, as this work was originally completed by Ajax and other construction contractors would not be willing to take the risk of performing maintenance on another contractor's work.

The Airport is only going to be a "pass through" on this project; in other words, when pay applications are ready, our design consultant will deposit the full costs to an escrow account and the pay application will move through the OPUS workflow and be paid by Pinellas County.

The reason why Pinellas County must be involved at all is for the following reasons:

- 1) The County contract requirements such as payment and other related procedures, warranties, bonds, insurance, etc., must be encompassed in this work to ensure the County is protected under their standard provisions and contract language.
- 2) The design consultant cannot enter a contract with the contractor for this work, as by doing so, the design consultant would become a de facto general contractor. This scenario would require the design consultant to have a contractor's license, the proper insurance, and ability to obtain performance and payment bonds, which, as a design consultant, they do not.

Please contact Scott Yarley, PE, if you require further information.



Pinellas County

Staff Report

File #: 22-1007D, Version: 1

Agenda Date: 12/31/2022

Subject:

Emergency agreement with Kimley-Horn & Associates Inc for Runway 18-36 Pavement Maintenance

Recommended Action:

Approval and execution by the County Administrator of the emergency agreement with Kimley-Horn & Associates Inc (Kimley-Horn), for Runway 18-36 Pavement Maintenance.

- The St. Pete-Clearwater International Airport (PIE) is requesting an emergency agreement with Kimley-Horn to correct a design error which was committed during work performed under prior contract no. 189-0334-CP for the Runway 18-36 Pavement Rehabilitation project. After the project had been completed, it was determined a portion of the longitudinal profile of the runway did not meet the design criteria per the FAA Advisory Circular 150/5300-13B, Airport Design.
- Kimley-Horn has agreed to correct their error by performing professional engineering services, at no cost to the County, to develop the design plans, construction administration, quality assurance testing, inspection, project close-out, and other necessary tasks needed to complete this work. Kimley-Horn will be paying for the construction and construction phase services of this project by depositing funds into a "perfect receivable account" created by Clerk Finance in order for the County to make payment to the contractor, Ajax Paving Industries of Florida, LLC once complete.
- Approval of this agreement with Kimley-Horn in the amount of \$2,322,396.21 is concurrent with the approval of the agreement with Ajax via Legistar No. 22-1027D. The total amount of \$2,322,396.21 from Kimley-Horn will be used to pay Ajax, as progress payments are received for construction activities.
- This emergency agreement is requested to expediate this work. Utilizing competition will be detrimental to the timely acquisition of goods and services.
- This design error is a serious safety issue, per the Airport. Allegiant pilots have filed safety reports on this bumpy condition which led to the investigation. The excessive bumpy takeoffs have been verified by Airport staff and deemed to be a serious safety issue that needs to be corrected immediately.
- The County Administrator has delegated authority under Code Section 2-181(b)1 to approve this emergency purchase with receipt and file to the Board of County Commissioners.

Contract No. 22-0650-E is not to exceed the amount of \$2,322,396.21 as reimbursement to pay Ajax for construction activities for a duration of 180 days.

Strategic Plan:

Deliver First Class Services to the Public and Our Customers

5.2 Be responsible stewards of the public's resources

5.3 Ensure effective and efficient delivery of county services and support

Summary:

This agreement with Kimley-Horn is to correct the inaccuracies from the original design document required under prior contract no. 189-0334-CP which expired February 22, 2022. Kimley-Horn will be reimbursing the County for all design and construction related costs by depositing funds into a "perfect receivable account" created by Clerk's Finance in order for the County to make payment to the contractor, Ajax Paving Industries of Florida, LLC (Ajax).

It is necessary to approve the agreement as an emergency to complete the work expeditiously and to allow the same vendor which started the work to complete the work.

Background/Explanation:

St. Pete-Clearwater International Airport (PIE) completed the Runway 18-36 Pavement Rehabilitation project in the Spring of 2021. Although the contractor met all acceptance criteria per the Contract Documents during construction, it was noticed after the completion of the project that there was a portion of the longitudinal profile of the runway that did not meet the design criteria per the FAA Advisory Circular 150/5300-13B, Airport Design.

Ajax, the original contractor for the Runway 18-36 Rehabilitation project, has provided a cost estimate of \$2,322,396.21 for this work. This includes \$1,823,098.38 for the work related to the Runway 18-36 maintenance, and an additional \$499,297.83 for pavement rehabilitation to Taxiway "G", (parallel taxiway to Runway 4-22), should it be needed due to the impacts of placing air carrier operations on this taxiway after the work related to Runway 18-36 is completed. (i.e. If no damage is done to Taxiway "G" during this project, this work will not be needed). All costs of this work will be borne by Kimley Horn.

Fiscal Impact:

The total cost of this agreement is \$2,322,396.21. Per the Agreement between Pinellas County and Kimley-Horn (Section 2B), Kimley-Horn hereby agrees that upon request by the County and based on the amount requested by Ajax in their monthly payment Apps/requests, they will send a payment equal to the requested and agreed upon amount into an account provided by the County. The County will use these funds to pay Ajax as a contractor during construction. Payments by Kimley-Horn will be made via wire transfer to the account provided by the County within ten (10) business days of mutual approval of the Contractor's pay request by the County and Kimley-Horn. As a result, no negative budgetary impacts are anticipated.

Delegated Authority:

Authority for the County Administrator to approve this emergency purchase is granted under Code Section 2-181(b)1.

Staff Member Responsible:

Thomas Jewsbury, Director, St. Pete-Clearwater International Airport
Merry Celeste, Division Director, Purchasing & Risk, Administrative Services

Joe Lauro, Director, Purchasing

Partners:

N/A

Attachments:

Agreement

AGREEMENT

THIS AGREEMENT ("Agreement") is entered into by and between Pinellas County, a political subdivision of the State of Florida ("County"), and Kimley-Horn and Associates, Inc. ("Kimley-Horn"), (collectively referred to as "the Parties"). This Agreement is effective upon full execution by both Parties.

WITNESSETH:

WHEREAS, the County previously had Ajax Paving Industries of Florida, LLC. ("Ajax") perform substantive pavement work to Runway 18-36; and

WHEREAS the above referenced pavement work to Runway 18-36 was done in accordance with plans provided and designed by Kimley-Horn ; and

WHEREAS post the pavement work to Runway 18-36, some necessary repair work to the runway has been identified and Kimley-Horn has agreed to bear the reasonable and agreed upon costs for that necessary pavement repair work, including but not limited to, any new plan and design costs, construction administration and construction management costs, including Quality Assurance testing and inspection, and construction related costs to perform the necessary pavement repair work; and

WHEREAS, given Ajax's familiarity with Airport operations and the specific runway work, and to not potentially void any existing warranty issues, if any, the Parties have agreed that the County will enter into a new agreement with Ajax to perform the necessary pavement repair work in accordance with the corrected plans prepared by Kimley-Horn as set forth in a brief version of the Scope of Work below; and

WHEREAS, Kimley-Horn will reimburse the County for all the reasonable and agreed upon costs associated with or resulting from the necessary pavement repair work as set forth herein not to exceed \$1,823,098.38; and

WHEREAS, the Parties further agree that should it be determined and agreed upon by the Parties that the existing pavement on the parallel taxiway to Runway 4-22 (a/k/a Taxiway G) has developed signs of pavement distresses due to the impacts of inordinate air carrier traffic being placed on it during the Runway 18-36 closure, Ajax may be instructed to perform a milling and overlay operation or other improvements to mitigate these pavement distresses and Kimley-Horn shall be liable for a portion of the reasonable and agreed upon costs for this additional work to Taxiway G, if necessary, Kimley-Horn's portion to be agreed by the Parties and not to exceed \$499,297.83.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the Parties hereto as follows:

1. SCOPE OF WORK:

- a) The anticipated work involves the milling and overlay of approximately twelve hundred (1200) linear feet of bituminous pavement, adjustment of centerline and edge line airfield lights,

and procurement and installation of new in-pavement light fixtures in accordance with the plans and technical specifications titled Runway 18-36 Pavement Maintenance, dated July 21, 2022 which will be set forth in greater detail in the Agreement between the County and Ajax.

b) Kimley-Horn, pursuant to an existing Continuing Professional Services Agreement (RFP contract no. 190-0486-CN (SS)), will also, at its sole cost, be providing professional services during the pavement repair work to be done by Ajax, including but not limited to, design/contract drawings, technical specs, construction administration, construction management, and Quality Assurance testing, inspections, as well as bearing the necessary reasonable and agreed upon Ajax pavement repair construction costs as set forth in the Exhibit 1, attached hereto, which has been provided to, reviewed and approved by Kimley Horn, not to exceed \$1,823,098.38.

c) Additionally, should it be determined and agreed upon by the Parties that during the closure and construction of the Runway 18-36 necessary pavement repair work that the existing Runway 4-22 (a/k/a Taxiway G) pavement has developed signs of pavement distresses due to diverted and inordinate amounts of air carrier traffic being placed on Runway 4-22 during the closure, Ajax may be instructed to perform a milling and overlay operation or other necessary improvements to repair those pavement distresses and Kimley-Horn shall be liable for a portion of the reasonable and agreed upon costs for this additional work, if necessary, Kimley-Horn's portion to be agreed by the Parties and not to exceed \$499,297.83.

2. FUNDING OF NECESSARY PAVEMENT REPAIR WORK:

a) The County will be responsible for awarding the construction contract for the necessary and agreed upon pavement repair work to Ajax as a non-competitive emergency project.

b) Kimley-Horn hereby agrees that upon request by the County and based on the amount requested by Ajax in their monthly payment Apps/requests, they will send a payment equal to the requested and agreed upon amount into an account provided by the County. The County will use these funds to pay Ajax as a contractor during construction. Payments by Kimley-Horn will be made within ten (10) business days of mutual approval of the Contractor's pay request by the County and Kimley-Horn.

c) Kimley-Horn shall make all agreed upon deposits due to the County as referenced above via wire transfer to the account provided by the County.

3. RELEASE OF CLAIMS RELATING TO REASONABLE AND AGREED UPON NECESSARY PAVEMENT REPAIR WORK:

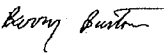
FOR AND IN CONSIDERATION of Kimley-Horn's obligations undertaken herein, County, for itself and its affiliates and anyone claiming by, through, or under it, has released and discharged, and by these presents does release, acquit and forever discharge Kimley-Horn, and its employees, subconsultants, agents, insurers, and affiliates of and from any and all causes of action, claims, demands, damages, costs, and expenses, based on any theory of law or equity including but not limited to claims for negligence, breach of contract, delay claims, lost profits, and consequential damages ("Claims") which County now has, or hereafter may have, on account of, or in any way

growing out of professional engineering, consulting and other services previously provided by Kimley-Horn for the initial pavement project to Runway 18-36 in Pinellas County, Florida (including but not limited to lost profits and consequential damages sustained during the period in which the repair work discussed in Section 1 above is performed). This release and discharge shall not apply to claims that allege the repair work discussed in Section 1 is deficient.


4. County acknowledges and represents to Kimley-Horn that it has no knowledge of any actual or alleged errors or omissions of Kimley-Horn related to any services provided by it other than the alleged errors and omissions giving rise to the Claims being released hereby
5. This Agreement constitutes a full and complete SETTLEMENT of doubtful and disputed claims, regardless of the adequacy of the consideration described above, and the payment described herein, and the acceptance of this Agreement is not an admission of liability or wrongdoing on the part of the persons and entities hereby released.
6. This Agreement shall be governed by and shall be construed and enforced in accordance with the laws of the State of Florida.
7. This Agreement contains the entire agreement between the undersigned and the parties released hereby.
8. The persons signing the Agreement below represent and warrant that they have full authority to execute this Agreement on behalf of and bind the designated entity and that there has been no assignment or other transfer by the St. Pete-Clearwater International Airport, (PIE), or County of any interest in the claims or matters released hereby.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the day and year written below.

PINELLAS COUNTY, FLORIDA
a political subdivision of the State of Florida

By: 
Name: Barry Burton, County Administrator
Title:
Date: September 26, 2022

KIMLEY-HORN AND ASSOCIATES, INC.

By: 
Name: Mudassar Alam, P.E.
Title: Senior Vice President
Date: 09/14/2022



Pinellas County

Staff Report

File #: 22-1027D, **Version:** 1

Agenda Date: 12/31/2022

Subject:

Emergency agreement with Ajax Paving Industries of Florida, LLC, for Runway 18-36 Pavement Maintenance.

Recommended Action:

Approval and execution by the County Administrator of the emergency agreement with Ajax Paving Industries of Florida, LLC (Ajax) for Runway 18-36 Pavement Maintenance.

- The St. Pete-Clearwater International Airport (PIE) is requesting an emergency agreement with Ajax to perform construction to correct a design error effecting the longitudinal profile of Runway 18-36 committed by the engineering firm, Kimley-Horn & Associates, Inc. (Kimley-Horn). The approval of the agreement with Kimley-Horn (Legistar No. 22-1007D) is concurrent with the approval of this agreement with Ajax.
- Kimley-Horn will be responsible for paying all costs associated with the construction and construction phase services of this project by depositing funds into a "perfect receivable account" created by Clerk's Finance in order for the County to make payment to Ajax for completing this work. Ajax is the original contractor who completed the work as required under prior contract no. 189-0334-CP.
- This emergency agreement is requested to expediate this work. Utilizing competition will be detrimental to the timely acquisition of goods and services. Total cost of this agreement is not to exceed \$2,322,396.21 for a duration of 180 days. This design error is a serious safety issue, per the Airport. Allegiant pilots have filed safety reports on this bumpy condition which led to the investigation. The excessive bumpy takeoffs have been verified by Airport staff and deemed to be a serious safety issue that needs to be corrected immediately.
- The County Administrator has delegated authority under Code Section 2-181(b)1 to approve this emergency purchase with receipt and file to the Board of County Commissioners. Staff requests approval under emergency code due to the serious safety issue. Staff is processing ratification by the Board under Legistar No. 22-1844A of the County Administrator's approval.

Contract No. 22-0650-E is for a not to exceed amount of \$2,322,396.21 for a duration of 180 days.

Strategic Plan:

Deliver First Class Services to the Public and Our Customers

5.2 Be responsible stewards of the public's resources

5.3 Ensure effective and efficient delivery of county services and support

Summary:

This emergency agreement with Ajax is to perform the construction necessary to correct the design error committed by Kimley-Horn. Ajax performed the original project work under contract no. 189-0334-CP for the Runway 18-36 Rehabilitation project which expired February 22, 2022.

Kimley-Horn will be responsible for paying all costs associated with the construction and construction phase services of this project by depositing funds into a "perfect receivable account" created by Clerk's Finance in order for the County to make payment to Ajax for completing this work.

It is necessary to approve the agreement as an emergency to complete the work expeditiously and to allow the same vendor which started the original work to complete the emergency work.

Background/Explanation:

St. Pete-Clearwater International Airport (PIE) completed the Runway 18-36 Pavement Rehabilitation project in the Spring of 2021. Although the contractor met all acceptance criteria per the contract documents during construction, it was noticed after the completion of the project that there was a portion of the longitudinal profile of the runway that did not meet the design criteria per the FAA Advisory Circular 150/5300-13B, Airport Design.

Ajax, the original contractor for the Runway 18-36 Rehabilitation project, has provided a cost estimate of \$2,322,396.21 for this work. This includes \$1,823,098.38 for the work related to the Runway 18-36 maintenance, and an additional \$499,297.83 for pavement rehabilitation to Taxiway "G", (parallel taxiway to Runway 4-22), should it be needed due to the impacts of placing air carrier operations on this taxiway after the work related to Runway 18-36 is completed (i.e., if no damage is done to Taxiway "G" during this project, this work will not be needed). All costs for this work will be borne by Kimley-Horn.

Fiscal Impact:

The total cost of this Agreement is \$2,322,396.21 (Agreement No. 22-0650-E, pg.1). Per the Agreement between Pinellas County and Kimley-Horn (Granicus Item: 22-1007D, Kimley-Horn Contract, Section 2B), Kimley-Horn hereby agrees that upon request by the County and based on the amount requested by Ajax in their monthly payment Apps/requests, they will send a payment equal to the requested and agreed upon amount into an account provided by the County. The County will use these funds to pay Ajax as a contractor during construction. Payments by Kimley-Horn will be made via wire transfer to the account provided by the County within ten (10) business days of mutual approval of the Contractor's pay request by the County and Kimley-Horn. As a result, no negative budgetary impacts are anticipated.

Delegated Authority:

Authority for the County Administrator to approve this emergency purchase is granted under Code Section 2-181(b)1.

Staff Member Responsible:

Thomas Jewsbury, Director, St. Pete-Clearwater International Airport
Merry Celeste, Division Director, Purchasing & Risk, Administrative Services
Joe Lauro, Director, Administrative Services

Partners:

N/A

Attachments:

Agreement

AGREEMENT

CONSTRUCTION AGREEMENT

This Agreement, made and entered into by and between Pinellas County, a political subdivision of the State of Florida, hereinafter designated the County, and

Ajax Paving Industries of Florida, LLC

(Corporation, Partnership or Individual Proprietor)

Authorized to do business in the State of Florida, with place of business located at

One Ajax Drive, North Venice, Fl 34275

herein after designated the Contractor,

WITNESSETH:

That for and in consideration of the sum not to exceed **Two Million Three Hundred Twenty-two Thousand Three Hundred Ninety-six and 21/100 U.S. dollars (\$2,322,396.21)** to be paid by the County to the CONTRACTOR as herein provided, and in further consideration of the mutual covenants and promises to be kept and performed by and between the parties hereto, it is agreed as follows:

1. THE CONTRACTOR AGREES:

- A. To furnish all services, labor, materials and equipment necessary for the complete performance, in a thorough and workmanlike manner, of the Work contemplated under Bid Title: **PIE Runway 18-36 Pavement Maintenance**, Bid No: **22-0650-E (PID #**), in Pinellas County, Florida, to comply with the applicable standards, and to perform all Work in strict accordance with the terms of the Contract Documents.
- B. To commence Work under this Agreement with an adequate force and equipment within 15 consecutive calendar days after receipt of written notice from the County to proceed hereunder, and to fully complete all necessary Work under the same within not more than **180** consecutive calendar days. It is understood and agreed that the date on which the consecutive calendar days will begin to be charged to the Project shall be the fifteenth (15th) calendar day from the date of receipt of the Notice to Proceed. Time of performance and completion of the Work of this Agreement is of the essence.
- C. That upon failure to complete all Work within the time provided for above, the Contractor shall pay to the County such sums as shall be determined in accordance with the Liquidated Damages provision of this Agreement, and the payment of such sum shall be secured as provided for therein.
- D. That the Contractor and each subcontractor shall furnish to the County, upon demand, a certified copy of the payroll covering Work under this Agreement, together with such other information as may be required by the County to ensure compliance with the law and the provisions of this Agreement.
- E. To procure all insurance as required by the Instructions to Bidders.
- F. To procure and maintain all permits and licenses which may be required by law in connection with the prosecution of the Work contemplated hereunder, except for those permits obtained by the County as expressly set forth in Appendix 1 of the Contract Documents. Notwithstanding the provisions above, the Contractor shall be responsible for non-compliance of all permit requirements, including all fines resulting from Contractor's non-compliance of said requirements.
- G. To permit any representative(s) of the County, at all reasonable times, to inspect the Work in progress or any of the materials used or to be used in connection therewith, whether such Work is located on or off the Project site, and to furnish promptly, without additional charge, all reasonable facilities, labor and materials deemed necessary by the County's Design Professional/Engineer/Project Manager, for the conducting of such inspections and tests as it may require.

AGREEMENT

- H. Unless otherwise provided in the special provisions, special conditions and Specifications, to assume liability for all damage to Work under construction or completed, whether from fire, water, winds, vandalism, or other causes, until final completion and acceptance by the County and notwithstanding the fact that partial payments may have been made during construction.
- I. No subcontract or transfer of Agreement shall in any case release either the Contractor or its surety of any liability under the Agreement and bonds. The County reserves the right to reject any subcontractors or equipment.
- J. Unless specifically prohibited by Florida law, the Contractor shall defend, indemnify and hold harmless the County and its officers and employees from any and all liabilities, claims, damages, penalties, demands, judgments, actions, proceedings, losses or costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, or by, or on account of, any claim or amounts recovered under the "Workers' Compensation Law" or of any other laws, by-laws, ordinance, order or decree whether resulting from any claimed breach of this Agreement by the Contractor or from personal injury, property damage, direct or consequential damages, or economic loss, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor or anyone employed or utilized by the Contractor in the performance of this Agreement. The duty to defend under this paragraph is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Contractor, the County and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to the Contractor. The Contractor's obligation to indemnify and defend under this Article will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the County or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations. The Contractor shall guarantee the payment of all just claims for materials, supplies, tools, labor or other just claims against it or any subcontractor in connection with this Agreement; and its bonds will not be released by final acceptance and payment by the County unless all such claims are paid or released.
- K. By signing this Agreement, the contractor certifies under penalty of law that it understands the terms and conditions of, and will comply with, the Pinellas County National Pollutant Discharge Elimination System (NPDES) Permit No. FLS000005 that authorizes the storm water discharge associated with construction activities.
- L. Contractor shall submit invoices for payment due as provided herein with such documentation as required by Pinellas County and all payments shall be made in accordance with the requirements of Section 218.70 et. seq, Florida Statutes, "The Local Government Prompt Payment Act." Invoices shall be submitted to the address below unless instructed otherwise on the purchase order, or if no purchase order, by the ordering department:

Finance Division Accounts Payable

Pinellas County Board of County Commissioners

P. O. Box 2438

Clearwater, FL 33757

Each invoice shall include, at a minimum, the Contractor's name, contact information and the standard purchase order number. In order to expedite payment, it is recommended the Contractor also include the information shown in Section A – General Conditions Payments/Invoices. The County may dispute any payments invoiced by Contractor in accordance with the County's Dispute Resolution Process for Invoiced Payments, established in accordance with Section 218.76, Florida Statutes, and any such disputes shall be resolved in accordance with the County's Dispute Resolution Process.

- M. Local, State, and Federal Compliance Requirements: The laws of the State of Florida apply to any purchase made under this Invitation to Bid. Bidders shall comply with all local, state, and federal directives, orders and laws as applicable to this bid and subsequent contract(s) including but not limited to Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Equal Employment Opportunity (EEO), Minority Business Enterprise (MBE), and OSHA as applicable to this contract.
- N. The Contractor and Subcontractor must register with and use the E-verify system in accordance with Florida Statute 448.095. The County will verify the work authorization of the Contractor and Subcontractor. A Contractor and Subcontractor may not enter into a contract with the County unless each party registers with and uses the E-verify system.

If a Contractor enters a contract with a Subcontractor, the Subcontractor must provide the Contractor with an affidavit stating that the Subcontractor does not employ, contract with, or subcontract with unauthorized aliens. The Contractor must maintain a copy of the affidavit for the duration of the contract.

AGREEMENT

If the County, Contractor, or Subcontract has a good faith belief that a person or entity with which it is contracting has knowingly violated Florida Statute 448.09(1) shall immediately terminate the contract with the person or entity.

If the County has a good faith belief that a Subcontractor knowingly violated this provision, but the Contractor otherwise complied with this provision, the County will notify the Contractor and order that the Contractor immediately terminate the contract with the Subcontractor.

A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged to Section 448.095(2)(d), Florida Statute. Contractor acknowledges upon termination of this agreement by the County for violation of this section by Contractor, Contractor may not be awarded a public contract for at least 1 year. Contractor acknowledges that Contractor is liable for any additional costs incurred by the County as a result of termination of any contract for a violation of this section.

Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in this section, requiring the subcontracts to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any Subcontractor or Lower Tier Subcontractor with the clause set for in this section.

- O. Supplier acknowledges and warrants that all digital content and services provided under this contract conforms and shall continue to conform during the Term of this Agreement to the W3C Web Content Accessibility Guidelines, version 2.0 ("WCAG 2.0") at conformance Level A and AA. If all digital content and services does not fully conform to WCAG 2.0 A and AA, Supplier shall advise Pinellas County in writing of the nonconformance prior to execution of this Agreement and shall provide Pinellas County a plan to achieve conformance to WCAG 2.0 A and AA, including but not limited to, an intended timeline for conformance. Failure to achieve conformance, as determined in Pinellas County's sole discretion, on its intended timeline shall be considered a material breach of this Agreement and grounds for termination by Pinellas County.

If during the Term of this Agreement, Supplier fails to maintain compliance with WCAG 2.0 A and AA or Pinellas County otherwise identifies an issue related to accessibility of the product (the "Accessibility Issue") that renders the product inaccessible, then Pinellas County shall notify Supplier of non-compliance. Within 30 days of Supplier's receipt of a non-compliance notice ("Notice"), Supplier and Pinellas County shall meet and mutually agree upon an appropriate timeline for resolution of the Accessibility Issue(s) ("Initial Meeting").

Should Supplier:

- i. fail to acknowledge receipt of the notice within 30 days of receipt of the Notice;
- ii. unreasonably and solely withhold agreement regarding a timeline for resolution for more than 30 days following the Initial Meeting; or
- iii. fail to materially resolve the Accessibility Issue(s) within the agreed-upon timeline,

- P. Failure to comply with the requirements of this section shall constitute a material breach of this Agreement and shall be grounds for termination of this Agreement by Pinellas County and subject Supplier to section J. of this Agreement, "Indemnification".

2. THE COUNTY AGREES:

- A. To pay to the Contractor the Agreement Amount herein above specified, as follows:

If progress satisfactory to the County is being made by the Contractor, the Contractor will receive partial payments on this contract as the work progresses, based upon estimates of the amount of work done less payments previously made. Neither progress payment nor partial or entire use or occupancy of the Project by the County shall constitute an acceptance of work not in accordance with the Contract Documents. The County, prior to making of any payment, may require the Contractor to furnish a certificate or other evidence showing the amount of work done or completed at that time.

AGREEMENT

3. IT IS MUTUALLY AGREED:

- A. That no change, alteration, amendment, payment for extra Work or agreement to pay for same, shall be binding upon the County until it has been approved the same, and until the same shall be properly approved by the Board.
- B. The County shall designate a representative insofar as prosecution of the Work, and interpretation of the Plans and Specifications are concerned, and that no payments shall be made by the County under this Agreement except upon the certificate of the proper County designee.
- C. This Agreement shall be interpreted under and its performance governed by the laws of the State of Florida.
- D. The failure of the County to enforce at any time or for any period of time any one or more of the provisions of the Contract Documents shall not be construed to be and shall not be a waiver of any such provision or provisions or of its rights thereafter to enforce each and every such provision.
- E. Each of the parties hereto agrees and represents that this Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and that no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, Work performed, or payments made prior to execution hereof shall be deemed merged into, integrated and superseded by this Agreement.
- F. Should any provision of this Agreement be determined by a court to be unenforceable, such determination shall not affect the validity or enforceability of any section or part thereof.

4. CONTRACT DOCUMENTS

The documents comprising this Agreement, which shall be known as the "Contract Documents", include the entirety of County's ITB pursuant to which this Agreement is awarded, including any addenda, and Contractor's submittal thereto. The following portions of the Contract Documents are listed for the purposes of determining priority:

CHANGE ORDERS

SECTION J AGREEMENT

SECTION B SPECIAL CONDITIONS

SECTION E SPECIFICATIONS

PROJECT PLANS

If there is a conflict between the terms of the Contract Documents, then the conflict shall be resolved according to the following order of priority: any terms required as a condition of grant funds shall have first priority; then the terms of this Agreement; then the terms of the above listed documents shall be given preference in their above listed order; and then the terms of any remaining documents.

5. PUBLIC RECORDS – CONTRACTOR'S DUTY

If the contractor has questions regarding the application of Chapter 119, Florida Statutes, to the contractor's duty to provide public records relating to this agreement, the contractor shall contact:

Pinellas County Board of County Commissioners

Purchasing and Risk Management Division

400 S. Ft. Harrison Ave, 6th Floor,

Clearwater, FL 33756

Public Records Liaison

AGREEMENT

Phone: 727-464-3237

Email: mcchartier@pinellascounty.org

6. BINDING AGREEMENT

This Agreement shall be binding upon, and shall inure to the benefit of the executors, administrators, heirs, successors and assigns of the Contractor.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the day and year as written.

PINELLAS COUNTY, By and through its County Administrator

By: *Barry Burton*
Signature/ Barry Burton

Date: October 11, 2022

Firm Name Ajax Paving Ind. of FL, LLC

By: *[Signature]*
Signature

Print Name: Joe Minich

Title: Area Manager

Contractor's Registration or Certification
No. issued by the State of Florida

APPROVED AS TO FORM
By: Michael A. Zas
Office of the County Attorney