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

St. Pete-Clearwater International

TAMPA BAY THE EASY WAY

MEMORANDUM

TO: Mary Celeste, Pinellas County Purchasing Director

FROM: Thomas R. Jewsbury, Airport Director

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.

Ajax Paving Industries of Florida, LLC.
One Ajax Drive, North Venice, FL 34275
Phone: 941-486-3600
Fax: 941-486-3500
www.ajaxpaving.com

The Future is Riding on Ajax.™

To:	PINELLAS COUNTY BCC	**Contact:**	
Address:	400 S. Fort Harrison Ave	**Phone:**	727-464-3311
	CLEARWATER, FL 33756 USA	**Fax:**	727-464-3925
Project Name:	Runway 18-36 Paving St Pete Clearwater	**Bid Number:**	
Project Location:		**Bid Date:**	

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
18-36					
C-105-1	Mobilization	1.00	LS	$187,000.00	$187,000.00
C-102-1	Silt Fence	2,271.00	LF	$2.85	$6,472.35
M-102-1	Maintenance Of Traffic And Temporary Construction Limits	1.00	LS	$45,000.00	$45,000.00
M-102-2	Maintenance Of Airport Supplied Runway CLosure Marker	2.00	EACH	$4,500.00	$9,000.00
M-103-1	Project Survey And Stakeout	1.00	LS	$56,500.00	$56,500.00
M-104-1	Safety And Security	1.00	LS	$79,500.00	$79,500.00
P-101-1	Bituminous Pavement Milling (Up To 2.5" Deep)	21,449.00	SY	$4.25	$91,158.25
P-101-2	Crack Repair	8,267.00	LF	$4.25	$35,134.75
P-401-1	Hot Mix Asphalt Pavement, Surface Course	3,118.00	TON	$242.85	$757,206.30
P-401-2	Hot Mix Asphalt Pavement, Leveling Course	1,270.00	TON	$275.19	$349,491.30
P-603-1	Emulsified Asphalt Tack Coat	3,048.00	GAL	$3.75	$11,430.00
P-620-1	Permanent Runway And Taxiway Painting With Type III Glass Beads (Yellow And WHite)	10,012.00	SF	$3.17	$31,738.04
P-620-2	Permanent Runway And Taxiway Painting With No Glass Beads (Black)	3,220.00	SF	$1.33	$4,282.60
P-620-3	Temporary Runway And Taxiway Painting With No Glass Beads (Yellow, White)	10,012.00	SF	$3.06	$30,636.72
P-621-1	Pavement Grooving	17,647.00	SY	$2.81	$49,588.07
L-125-1	Adjust Existing Runway Edge Light L-867 To New Finish Grade	2.00	EACH	$2,605.00	$5,210.00
L-125-2	Adjust Existing Runway Centerline Light L-868 To New Finish Grade	25.00	EACH	$2,950.00	$73,750.00
				Total Price for above 18-36 Items:	**$1,823,098.38**
TW G					
C-105-1	Mobilization - TW G	1.00	LS	$5,400.00	$5,400.00
M-104-1	Safety And Security	1.00	LS	$10,700.00	$10,700.00
P-101-1	Bituminous Pavement Milling (Up To 2.5" Deep)	11,215.00	SY	$4.25	$47,663.75
P-101-2	Crack Repair	7,954.00	LF	$4.25	$33,804.50
P-401-1	Hot Mix Asphalt Pavement, Surface Course	1,630.00	TON	$242.85	$395,845.50
P-603-1	Emulsified Asphalt Tack Coat	1,234.00	GAL	$3.75	$4,627.50
P-620-1	Permanent Runway And Taxiway Painting With Type III Glass Beads (Yellow And WHite)	242.00	SF	$3.17	$767.14
P-620-2	Permanent Runway And Taxiway Painting With No Glass Beads (Black)	368.00	SF	$1.33	$489.44
				Total Price for above TW G Items:	**$499,297.83**

Total Bid Price: $2,322,396.21

Ajax Paving Industries of Florida, LLC.
One Ajax Drive, North Venice, FL 34275
Phone: 941-486-3600
Fax: 941-486-3500
www.ajaxpaving.com

The Future is Riding on Ajax.™

To:	PINELLAS COUNTY BCC	**Contact:**	
Address:	400 S. Fort Harrison Ave	**Phone:**	727-464-3311
	CLEARWATER, FL 33756 USA	**Fax:**	727-464-3925
Project Name:	Runway 18-36 Paving St Pete Clearwater	**Bid Number:**	
Project Location:		**Bid Date:**	

Notes:

- This Proposal includes ONLY those items and services specifically described above.
- Asphalt overruns due to pre-existing conditions, including soft base, subgrade or base tolerance will be invoiced at unit prices.
- Prices on this quotation are based on construction prior to September 30, 2022. Any construction after this date will be subject to increased prices of labor, materials and supplies.
- Payment shall be based upon actual field measured quantities.
- Acceptance of this proposal confirms agreement with and incorporation of the standard terms of contract of Ajax Paving Industries of Florida, LLC. This proposal is binding on customer when signed and transmitted to Ajax by mail, PDF, or facsimile.
- The prices on this quotation are firm for 15 days from the date of this quote.
- Pricing includes bond.
- All notes on this quote are to be included in subcontract with Prime. Notes will take precedence over conflicting language in subcontract.
- Ajax Paving will not be responsible for damage to asphalt by third parties. Repairs can be made based on T&M rates.

ACCEPTED: The above prices, specifications and conditions are satisfactory and are hereby accepted. **Buyer:** _____ **Signature:** _____ **Date of Acceptance:** _____	**CONFIRMED:** **Ajax Paving Industries Of Florida, LLC** **Authorized Signature:** _____ **Estimator:** Joe Minich 813-769-1990 jminich@ajaxpaving.com

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

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

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:

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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 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. <u>THE COUNTY AGREES:</u>

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

Print Name: Joe Minick

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

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DEFINITIONS

Whenever the following terms, or pronouns used in place of them, are used in these Contract Documents they shall have the meanings given below:

Addendum: A modification, revision or clarification of the Plans or other Contract Documents, issued by the Purchasing Department and distributed to prospective Bidders before the bid opening.

Approved Equal: An approved equivalent item that is approved in writing, (via an Addendum to the Agreement), prior to the Bid Opening. Bidder must submit their proposed equivalent item no later than question deadline date on page 1. Any information received after this deadline will not be considered.

Bid Publication: The date on which public notice is made to request a bid/request for proposal for this Project.

Bid/Request for Proposal: The offer to perform the Work described in the Contract Documents at a specified cost.

Architect/Design Professional/Engineer of Record: The Professional Architect/Design Professional/Engineer or Architectural/Design Professional/Engineering Firm contracted by the County and registered in the State of Florida who develops criteria and concept for the Project, performs the analysis and is responsible for the preparation of the Contract Plans and Specifications. The Architect/Design Professional/Engineer of Record will be a Consultant retained by the County or a county in-house staff member.

Board of County Commissioners: Governing body of Pinellas County hereinafter referred to as the Board.

Calendar Day: Every day shown on the calendar, ending and beginning at Midnight.

Change Order: A written order authorized by the Board or County Administrator, issued by the Design Professional/Engineer/Project Manager, and accepted by the Contractor directing certain changes, additions or reductions in the Work or in the materials used.

Commencement Date: Date established in the Notice to Proceed. Contractor shall commence the Work within fifteen (15) consecutive calendar days or as mutually agreed by the Parties, from the date of the Notice to Proceed.

Consultant: The Professional Engineer/Design Professional or Engineering Firm registered in the State of Florida who performs Professional Engineering Services for the County, other than County personnel. The Consultant may be the Design Professional/Engineer of Record or may provide services through and be subcontracted to the Design Professional/Engineer of Record or maybe providing construction engineering and inspection (CEI) services, as applicable.

Contractor: The General Contractor, the Individual, Partnership or Corporation agreeing to do the Work for the County as Prime Contractor. The Contractor may be refereed to interchangeably as Vendor and/or Bidder in this document pending on the contracting phase governed herein.

Contract Documents: All documents referred to herein in addition to all duly executed and issued addenda, legal advertisements and change orders.

Design Professional: A collective term intended to apply to “Architect/Engineer of Record”, licensed and registered in the State of Florida, the prime party responsible for the design, engineering, and construction documentation of the project and contracted directly with the Owner.

Engineer: The Engineer, a staff member of the County or his duly authorized representative, acting on behalf of the County.

FDOT: The Florida Department of Transportation.

FDOT Specifications: Florida Department of Transportation, “STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION”, (latest edition at time of advertisement), and all supplemental specifications thereto.

Final Acceptance: Whenever the Work provided for under the Agreement has been completely performed by the Contractor, and the final inspection has been made by the Design Professional/Engineer/Project Manager.

DEFINITIONS

Final Completion: The point in which all Work is complete and all other Agreement requirements have been satisfied.

Inspector: An authorized representative of the Design Professional/Engineer/Project Manager, assigned to make any or all necessary inspections of the Work performed, and materials furnished by the Contractor.

Man Day: A unit of measure for work by one person in a calendar day.

Notice of Award: The formal document informing the Contractor of its successful selection to construct the Project.

Notice to Proceed: Formal written document informing the Contractor to begin the Work, and notifying the Contractor of the architect, project engineer and other agency or person to which the Contractor may submit its payment request or invoice.

Owner: Is Pinellas County, a political subdivision of the State of Florida, herein after referred to as the County.

PCU - Standard Specifications: Pinellas County Utilities (PCU) "Material Specification Manual", "Technical Specifications", "Pump Station Standard Details" and "Standard Details" as described and defined on the Utility Department's website at www.pinellascounty.org/utilities under the Engineering header. Contractor's bid must be based on those standards that are in place as of the Bid Publication date.

PC Special Provisions: Specifications approved by Pinellas County that modify or amend the Pinellas County Standard Technical Specifications for Roadway and General Construction (latest edition) ("Standard Specifications"), setting forth conditions that vary from the Standard Specifications and are applicable to a specific type of Project, or a specific set of conditions.

PC Std. Tech. Spec.: Pinellas County Standard Technical Specifications for Roadway and General Construction (latest edition at time of advertisement) shown on the Pinellas County website.

PC Supplemental Specifications: Specifications approved by Pinellas County that are in addition to the Pinellas County Standard Technical Specifications for Roadway and General Construction (latest edition) ("Standard Specifications") setting forth conditions that are additional to the Standard Specifications and are applicable to a specific type of Project, or a specific set of conditions.

Plans: Approved drawings or reproductions thereof, showing the location, character, dimension and details of the work to be done as issued by the Design Professional/Engineer.

Project: All Work, materials or equipment (whether or not specifically called for) required to produce the intended result as described within the Contract Documents.

Project Manager: The individual designated by the Owner to represent the owner on all administrative matters related to the Project.

Proposal and Bid Submittal Sheets: Form, as required in Section E.

Punch List: The written compilation of those items identified by the Design Professional/Engineer/Project Manager after Substantial Completion is achieved, which are required to render complete, satisfactory and acceptable the Project (or phase of a Project).

Record Drawings: Record Drawings are a set of signed/sealed CONTRACT PLANS that are maintained by the Contractor for the express use of recording AS-BUILT INFORMATION.

Regular Workday or Business Day: Any calendar day from 7:00 AM to 7:00 PM except a Saturday, Sunday or recognized holiday.

Schedule of Values: The individual values as set forth by the Contractor as payment for the bid quantity units identified on the bid submittal sheets. The total of the extended units in the Schedule of Values determines the Agreement Amount. The Agreement Amount may only be modified by Change Order approved by the Board, or County Administrator.

DEFINITIONS

Scope of Work: The general intent of the Work to be accomplished as defined by the Project Plans and Specifications.

Special Notices: Specific clauses adding to or revising the Standard Specifications, setting forth conditions varying from or additional to the Standard Specifications, for a specific Project.

Specifications: The directions, provisions and requirements contained herein, together with all stipulations contained in the plans or Contract Documents, setting out or relating to the method and manner of performing the Work, or to the quantities and qualities of materials and labor to be furnished under the Agreement.

Substantial Completion: The date of “Substantial Completion” of the Work (or designated portions thereof) is the date certified by the Consultant and approved by the Design Professional/Engineer/Project Manager when construction is sufficiently complete, in accordance with the Contract Documents, so the county can occupy or utilize the Work (or designated portions thereof) for the use for which it was intended.

Survey Crew Day: A unit of measurement for Work by a survey crew in a calendar day.

Survey and Layout Plan: See Section B.

Technical Special Provisions: Specifications prepared, signed and sealed by the Consultant. These would be listed in the document hierarchy (shown in Section E) ahead of any other “Standard Specifications”, if applicable.

Unforeseen Work: Conditions encountered during the performance of the Work, sub-surface or otherwise concealed, or of an unusual nature, which differ materially from those indicated in the Contract Documents.

Unspecified: A pay item included for usage as directed by the County, and for usage under conditions or circumstances unforeseen at the time of Agreement.

Work: All labor, materials & incidentals required for the construction of the improvement for which the Agreement is made, including superintendence, use of equipment & tools, and all services & responsibilities prescribed or implied, which are necessary for the complete performance by the Contractor of his obligations under the contact. Unless otherwise specified herein or in the Agreement, all costs of liability and of performing the Work shall be at the Contractor's expense.

SECTION A - GENERAL CONDITIONS

1. CONTRACTOR LICENSE REQUIREMENT

All contractor performing construction and related work in Pinellas County must comply with our regulatory legislation, Chapter 75-489, Laws of Florida, as amended. Failure to have a competency license in a regulated trade will be cause for rejection of any submittal and/or award.

2. MATERIAL SAFETY DATA SHEETS REQUIREMENTS

If any chemicals, materials, or products containing toxic substances, in accordance with OSHA Hazardous Communications Standards, are contained in the products purchased by the County as a result of this solicitation, the successful contractor shall provide a Safety Data Sheet (SDS) at the time of each delivery.

3. RIGHT TO AUDIT

Pinellas County reserves the privilege of auditing a contractor's records as such records relate to purchases between Pinellas County and said contractor. Such audit privilege is provided for within the text of the Pinellas County Code §2-187. Records should be maintained for five (5) years from the date of final payment.

4. STATEMENT RELATIVE TO "PUBLIC ENTITY CRIMES"

Contractor is directed to the Florida Public Entity Crime Act, Fla. Stat. 287.133, and Fla. Stat. 287.135 regarding Scrutinized Companies, and contractor agrees that its submittal and, if awarded, its performance of the agreement will comply with all applicable laws including those referenced herein. contractor represents and certifies that contractor is and will at all times remain eligible to submit for and perform the services subject to the requirements of these, and other applicable, laws. contractor agrees that any agreement awarded to contractor will be subject to termination by the County if contractor fails to comply or to maintain such compliance.

5. COUNTY INDEMNIFICATION

a. 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.

b. 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.

c. 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, including but not limited to any violation of requirements of the Americans with Disabilities Act of 1990, as may be amended, and all rules and regulations issued pursuant thereto (collectively the “ADA”) 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.

SECTION A - GENERAL CONDITIONS

6. VARIANCE FROM STANDARD TERMS & CONDITIONS

All standard terms and conditions stated in this section apply to this Agreement except as specifically stated in the subsequent sections of the document, which take precedence over this section, and should be fully understood by contractors prior to submitting on this requirement.

7. ADA REQUIREMENT FOR PUBLIC NOTICES

Persons with disabilities requiring reasonable accommodation to participate in this proceeding/event, should call 727-464-4062 (voice/tdd) fax 727-464-4157, not later than seven days prior to the proceeding.

8. "OR EQUAL" DETERMINATION

Where submitting other than specified, the determination of equivalency will be at the sole discretion of Pinellas County and its specialized personnel.

9. INSURANCE

Notice: The contractor must provide a certificate of insurance and endorsement in accordance with the insurance requirements listed in the insurance section below. Failure to provide the required insurance within a ten (10) day period following the determination or recommendation of lowest responsive, responsible submitter may result in the County to vacate the original determination or recommendation and proceed with recommendation to the second lowest, responsive, responsible submitter.

10. PROCUREMENT POLICY FOR RECYCLED MATERIALS

a. Pinellas County wishes to encourage its contractors to use recycled products in fulfilling contractual obligations to the County and that such a policy will serve as a model for other public entities and private sector companies.

b. When awarding a purchase or recommending a purchase for products, materials, or services, the Director of Purchasing and Risk Management may allow a preference to a responsive contractor who certifies that their product or material contains the greatest percentage of postconsumer material. If solicitation includes paper products, contractor must certify that their materials and/or products contain at least the content recommended by the EPA guidelines.

c. On all quotes over fifty thousand dollars ($50,000) and informal quotes under fifty thousand dollars ($50,000), or as required by law, the Director of Purchasing and Risk Management shall require vendors to specify which products have recycled materials, what percentage or amount is postconsumer material, and to provide certification of the percentages of recycled materials used in the manufacture of goods and commodities procured by the County.

d. Price preference is not the preferred practice the County wishes to employ in meeting the goals of this resolution. If a price preference is deemed to serve the best interest of the County and further supports the purchase of recycled materials, the Director of Purchasing will make a recommendation that a price preference be allowed up to an amount not to exceed 10% above the lowest complying submittal received.

Definitions for Recycled Materials:

Recovered Materials: Materials that have recycling potential, can be recycled, and have been diverted or removed from the solid waste stream for sale, use or reuse, by separation, collection, or processing.

Recycled Materials: Materials that contain recovered materials. This term may include internally generated scrap that is commonly used in industrial or manufacturing processes, waste or scrap purchased from another manufacturer and used in the same or a closely related product.

Postconsumer Materials: Materials which have been used by a business or a consumer and have served their intended end use, and have been separated or diverted from the solid waste stream for the purpose of recycling, such as; newspaper, aluminum, glass containers, plastic containers, office paper, corrugated boxes, pallets or other items which can be used in the remanufacturing process.

11. ASBESTOS MATERIALS

a. The contractor shall perform all Work in compliance with Federal, State and local laws, statutes, rules, regulations and ordinances, including but not limited to the Department of Environmental Protection (DEP)'s asbestos requirements, 40 CFR Part 61, Subpart M, and OSHA Section 29 CFR 1926.58. Additionally, the contractor shall

be properly licensed and/or certified for asbestos removal as required under Federal, State and local laws, statutes, rules, regulations and ordinances.

b. The County shall be responsible for filing all DEP notifications and furnish a copy of the DEP notification and approval for demolition to the successful contractor. The County will furnish a copy of the asbestos survey to the successful contractor. The contractor must keep this copy on site at all times during the actual demolition.

12. PAYMENT/INVOICES

Contractor shall submit invoices for payment 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

Email: FinanceAccountsPay@MyPinellasClerk.org

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 contractors also include the information shown in below. 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.

Remit To: Billing address to which you are requesting payment be sent

Invoice Date: Creation date of the invoice

Contractor Information: Company name, mailing address, phone number, contact name and email address as provided on the purchase order

Invoice Number: Company tracking number

Shipping Address: Address where goods and/or services were delivered

Ordering Department: Name of ordering department, including name and phone number of contact person

Purchase order Number: Standard purchase order number

Ship Date: Date the goods/services were sent/provided

Quantity: Quantity of goods or services billed

Description: Description of services or goods delivered

Unit Price: Unit price for the quantity of goods/services delivered

Line Total Amount due by line item

Invoice Total: Sum of all line totals for the invoice

Pinellas County offers a credit card payment process (ePayables) through Bank of America. Pinellas County does not charge contractor to participate in the program; however, there may be a charge by the company that processes your credit card transactions. For more information please visit Pinellas County purchasing website at: www.pinellascounty.org/purchase.

SECTION A - GENERAL CONDITIONS

13. TAXES

a. The County is exempt from all state and federal sales, use, transportation and excise taxes. The Laws of the State of Florida provide that sales and use taxes are payable by the contractor upon the tangible personal property incorporated in the work and such taxes shall be paid by the contractor and be deemed to have been included in the solicitation.

b. Payments to Pinellas County are subject to applicable Florida taxes.

14. TERMINATION

a. Pinellas County reserves the right to terminate this agreement, without cause by giving thirty (30) days prior written notice to the Contractor of the intention to terminate or with cause if at any time the Contractor fails to fulfill or abide by any of the terms or conditions specified.

b. Failure of the Contractor to comply with any of the provisions of this Agreement shall be considered a material breach of Agreement and shall be cause for immediate termination of the Agreement at the sole discretion of Pinellas County.

c. In addition to all other legal remedies available to the Pinellas County, the Pinellas County reserves the right to terminate and obtain from another source any services which have not been provided within the period of time stated in the proposal, or if no such time is stated, within a reasonable period of time from the date of request, as determined by the Pinellas County.

d. In the event that sufficient budgeted funds are not available for a new fiscal period, the Pinellas County shall notify the Contractor of such occurrence and the Agreement shall terminate on the last day of the then current fiscal year period without penalty or expense to the Pinellas County.

15. CONTRACTOR CAPABILITY/REFERENCES

Prior to agreement award, any contractor may be required to show that the company has the necessary facilities, equipment, ability and financial resources to perform the work specified in a satisfactory manner and within the time specified. In addition, the company must have experience in work of the same or similar nature, and can provide references, which will satisfy the County. Contractors must furnish a reference list of at least four (4) customers for whom they have performed similar services.

16. DELIVERY/CLAIMS

Prices quoted shall be FOB Destination, freight included and unloaded to location(s) within Pinellas County. Actual delivery address(s) shall be identified at time of order. Successful contractor(s) will be responsible for making any and all claims against carriers for missing or damaged items.

17. MATERIAL QUALITY

All materials purchased and delivered against this Agreement will be of first quality and not damaged and/or factory seconds. Any materials damaged or not in first quality condition upon receipt will be exchanged within twenty-four (24) hours of notice to the contractor at no charge to the County.

18. WRITTEN REQUESTS FOR INTERPRETATIONS/CLARIFICATIONS

No oral interpretations will be made to any firms as to the meaning of specifications or any other contractor documents. All questions pertaining to the terms and conditions or scope of work of this solicitation must be sent in writing (electronically) to the Purchasing and Risk Management Division and received by the date specified in solicitation. Responses to questions may be handled as an addendum if the response would provide clarification to requirements of the solicitation. All such addenda shall become part of the agreement documents. The County will not be responsible for any other explanation or interpretation of the proposed solicitation made or given prior to the award of the agreement. The Purchasing and Risk Management Division will be unable to respond to questions received after the specified time frame.

19. ASSIGNMENT/SUBCONTRACTING/CORPORATE ACQUISITIONS AND/OR MERGERS

The contractor shall perform this agreement. If a contractor intends to subcontract a portion of this work, the contractor must disclose that intent in the solicitation. No assignment or subcontracting shall be allowed without prior written consent of the County. In the event of a corporate acquisition and/or merger, the contractor shall provide

SECTION A - GENERAL CONDITIONS

written notice to the County within thirty (30) business days of contractor's notice of such action or upon the occurrence of said action, whichever occurs first. The right to terminate this agreement, which shall not be unreasonably exercised by the County, shall include, but not be limited to, instances in which a corporate acquisition and/or merger represent a conflict of interest or are contrary to any local, state, or federal laws. Action by the County awarding an agreement to a contractor, which has disclosed its intent to assign or subcontract in its response to the solicitation, without exception shall constitute approval for purposes of this agreement. The contractor must inform the County in writing within forty-five (45) business days if the contractor's business entity's name changes. The contractor will bear all responsibility and waive any rights it may have to relief for any delay in processing a payment associated with the County's inability to issue payment to the contractor for a business entity name change that the County was not made aware of as reflected herein.

20. EXCEPTIONS

Contractor is advised that if it wishes to take exception to any of the terms contained in this solicitation or the attached agreement it must identify the term and the exception in its response to the solicitation. Failure to do so may lead County to declare any such term non-negotiable. contractor's desire to take exception to a non-negotiable term will not disqualify it from consideration for award.

21. NON-EXCLUSIVE CONTRACT

Award of this agreement shall impose no obligation on the County to utilize the contractor for all work of this type, which may develop during the agreement period. This is not an exclusive agreement. The County specifically reserves the right to concurrently agreement with other companies for similar work if it deems such action to be in the County's best interest. In the case of multiple-term agreements, this provision shall apply separately to each term.

22. ADDITIONAL REQUIREMENTS

The County reserves the right to request additional goods or services relating to this agreement from the contractor. When approved by the County as an amendment to this agreement and authorized in writing, the contractor shall provide such additional requirements as may become necessary.

23. ADD/DELETE LOCATIONS SERVICES

The County reserves the right to unilaterally add or delete locations/services, either collectively or individually, at the County's sole option, at any time after award has been made as may be deemed necessary or in the best interests of the County. In such case, the contractor(s) will be required to provide services to this agreement in accordance with the terms, conditions, and specifications.

24. PUBLIC EMERGENCIES

It is hereby made a part of this agreement that before, during, and after a public emergency, disaster, hurricane, tornado, flood, or other acts of God that Pinellas County shall require a first priority for goods and services. It is vital and imperative that the majority of citizens are protected from any emergency situation that threatens public health and safety, as determined by the County. contractor agrees to rent/sell/lease all goods and services to the County or governmental entities on a first priority basis. The County expects to pay a fair and reasonable price for all products and services rendered or contracted in the event of a disaster, emergency, hurricane, tornado or other acts of God.

25. CONFLICT OF INTEREST

a. The contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder. The contractor further represents that no person having any such interest shall be employed during the agreement term and any extensions. In addition, the contractor shall not offer gifts or gratuities to County employees as County employees are not permitted to accept gifts or gratuities. By signing this document, the contractor acknowledges that no gifts or gratuities have been offered to County employees or anyone else involved in this competitive solicitation process.

b. The contractor shall promptly notify the County's representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest, or other circumstance, which may influence or appear to influence the contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that

the contractor may undertake and request an opinion of the County as to whether the association, interest or circumstance would, in the opinion of the County, constitute a conflict of interest if entered into by the contractor. The County agrees to notify the contractor of its opinion, by certified mail, within thirty days of receipt of notification by the contractor.

c. It is essential to government procurement that the process be open, equitable and ethical. To this end, if potential unethical practices including but not limited to collusion, receipt or solicitation of gifts and conflicts of interest (direct/indirect) etc. are observed or perceived, please report such activity to:

Pinellas County Clerk of Circuit Court – Division of Inspector General

Phone – **(727) 45FRAUD** (453-7283)

Fax – 727-464-8386

26. DISPUTE RESOLUTION FOR PAYMENT REQUEST OR INVOICE

Payment of invoices for work performed for Pinellas County Board of County Commissioners is made, by standard, in arrears in accordance with Section 218.70, et. seq., Florida Statutes, the Local Government Prompt Payment Act. If a dispute should arise as a result of non-payment of a payment request or invoice the following Dispute Resolution process shall apply:

a. Pinellas County shall notify a contractor in writing within ten (10) days after receipt of an improper invoice, that the invoice is improper. The notice should indicate what steps the contractor should undertake to correct the invoice and resubmit a proper invoice to the County. The steps taken by the contractor shall be that of initially contacting the requesting department to validate their invoice and receive a sign off from that entity that would indicate that the invoice in question is in keeping with the terms and conditions of the agreement. Once sign off is obtained, the contractor should then resubmit the invoice as a corrected invoice to the requesting department which will initiate the payment timeline.

    1. Requesting department for this purpose is define as the County department for whom the work is performed.

    2. Proper invoice for this purpose is defined as an invoice submitted for work performed that meets prior agreed upon terms or conditions to the satisfaction of Pinellas County.

b. Should a dispute result between the contractor and the County about payment of a payment request or an invoice then the contractor should submit their dissatisfaction in writing to the requesting department. Each Requesting Department shall assign a representative who shall act as a dispute manager to resolve the issue at departmental level.

c. The dispute manager shall first initiate procedures to investigate the dispute and document the steps taken to resolve the issue in accordance with section 218.76 Florida Statutes. Such procedures shall be commenced no later than forty-five (45) days after the date on which the payment request or invoice was received by Pinellas County, and shall not extend beyond sixty (60) days' after the date on which the payment request or invoice was received by Pinellas County.

d. The dispute manager should investigate and ascertain that the work, for which the payment request or invoice has been submitted, was performed to Pinellas County's satisfaction and duly accepted by the proper authority. Proper authority for this purpose is defined as the Pinellas County representative who is designated as the approving authority for the work performed in the contractual document. The dispute manager shall perform the required investigation and arrive at a solution before or at the sixty (60) days' timeframe for resolution of the dispute, per section 218.76, Florida Statutes. The County Administrator or his or her designee shall be the final arbiter in resolving the issue before it becomes a legal matter. The County Administrator or his or her designee will issue their decision in writing.

e. Pinellas County dispute resolution procedures shall not be subject to Chapter 120 of the Florida Statutes. The procedures shall also, per section 218.76, Florida Statutes, not be intended as an administrative proceeding which would prohibit a court from ruling again on any action resulting from the dispute.

f. Should the dispute be resolved in the County's favor interest charges begin to accrue fifteen (15) days after the final decision made by the County. Should the dispute be resolved in the contractor's favor the County shall pay interest as of the original date the payment was due.

SECTION A - GENERAL CONDITIONS

g. Pursuant to sections 218.70 et. seq., Florida Statues, an award will be made to cover court costs and reasonable attorney fees, including fees incurred as a result of an appeal to the prevailing party. This provision is applicable if the non-prevailing party held back payment that was the reason for the dispute without any reasonable lawful basis or fact to dispute the prevailing party's claim to those amounts.

27. LUMBER PRODUCED IN STATE OF FLORIDA

Per Florida Statute 255.20, lumber, timber and other forest products utilized in this contract must be produced and manufactured in Florida, if wood is a component of the project, and if such products are available and their price fitness and quality are equal.

The following does not apply:

a. To plywood specified for monolithic concrete forms.

b. If the structural or service requirements for timber for a particular job cannot be supplied by native species.

c. If the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.

d. To transportation projects for which federal aid funds are available.

28. 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

Phone: 727-453-3218

Email: hconner@pinellascounty.org

29. E-VERIFY

The contractor and subcontractor must register with and use the E-verify system in accordance with Florida Statute 448.095. 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.

If the County, Contractor, or Subcontractor 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.

SECTION A - GENERAL CONDITIONS

A contract terminated under the provisions of this section is not a breach of contract and may not 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 one (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.

30. INDEPENDENT CONTRACTOR STATUS AND COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

Contractor acknowledges that it is functioning as an independent contractor in performing under the terms of this agreement, and it is not acting as an employee of Pinellas County. The contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, located at 8 U.S.C. Section 1324, et seq., and regulations relating thereto. Failure to comply with the above provisions of the agreement shall be considered a material breach and shall be ground for immediate termination of the agreement.

31. TRUTH IN NEGOTIATIONS

The contractor certifies to truth-in-negotiation and that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. Further, the original agreement amount and any additions thereto shall be adjusted to exclude any significant sums where the County determines the agreement price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. Such adjustments must be made within one (1) year following the end of the agreement.

SECTION B – SPECIAL CONDITIONS

1. SMALL BUSINESS ENTERPRISE (SBE) PARTICIPATION REQUIREMENTS

A. It is the policy of the Board of County Commissioners (Board) that SBE qualified firms have the maximum opportunity to participate on County projects. In this regard, the contractor to whom any award of this solicitation is made shall take all necessary and reasonable steps to ensure that SBE qualified firms have the maximum opportunity to participate in this contract. **Failure of the bidder to comply with SBE pre-award requirements may result in rejection of the bid. Failure of the contractor to perform contractual requirements of the SBE requirements pertaining to this contract may constitute a material breach of the contract and may result in contract termination**

B. This section outlines the requirements for Small Business Enterprise (SBE) participation as outlined in Purchasing Procedures Section 14. An SBE is defined as a local business that is independently owned and which is not dominant in its field of operation. The Small Business must also comply with the following:

i. The business must serve a commercially useful function.

ii. The business must be located in Pinellas, Hillsborough. Pasco or Manatee Counties.

iii. The company's total annual sales do not exceed the maximum 3 year average gross revenue of three 3 million dollars for businesses providing services or gross revenues not exceeding (8) million for construction service providers.

iv. The number of employees of the company does not exceed the maximum 3 year average of 50 employees.

C. Information pertaining to SBE registration may be found at the Economic Development website: www.pced.org/page/sbe.

D. The Board has established an overall annual goal for the participation of SBE qualified firms in all construction contract awards of $100,000 or more. As subcontract awards by the successful bidder on this solicitation to SBE qualified firms are essential to the achievement of the Board's SBE goals, this specification includes requirements with which bidders must comply. Bidders must meet the goal as set forth below for participation of SBE qualified firms.

E. In connection with this solicitation and resulting contract, a goal of (**10%)** has been established for participation by SBE firms as subcontractors. The mandatory goal shall be applied to the full monetary value of the contract and shall be reflected in the monetary portion spent on subcontractors for consulting or construction services to be awarded to those SBE qualified firms meeting contract specifications.

F. Provisional reciprocity shall be granted to SBE firms that are principally domiciled in Pinellas, Pasco, Hillsborough, and Manatee Counties and have registered through that agency or municipality. SBE firms qualified by the State of Florida and located in the counties listed above will also be granted reciprocity.

G. In order to be considered for provisional certification and be counted toward the goal attainment, the contractor or subcontractor must be registered with the Pinellas County Department of Economic Development website www.pced.org/page/sbe.

H. The Subcontractors/Material Suppliers List (List) must be completed and submitted with your bid submittal. Refer to Appendix 7, SBE Compliance Form. The List must include the suppliers name, scope or type of work to be performed and dollar amount. The identification of all SBE firms to be utilized on the project must be shown on this List. This List is the basis for determining whether the bidder met the SBE goal attainment.

2. PRICING/PERIOD OF CONTRACT

Unit prices quote of listed items shall be held firm for the duration of the contract. Duration of the contract shall be through delivery and acceptance of all goods/services by County representative.

3. PRE-COMMENCEMENT MEETING

Upon award, the County will coordinate a pre-commencement meeting with the successful Contractor. The meeting will require Contractor and the County Representative to review specific contract details and deliverable documents at this meeting to ensure the scope of work and work areas are understood.

SECTION B – SPECIAL CONDITIONS

4. CONTRACT SECURITY

A. The bidder shall provide a performance bond and a payment bond in the form prescribed in Section I and each in the amount of **100%** of the agreement amount, the costs of which are to be paid by the bidder. The bonds will be acceptable to the County only if the following conditions are met:

1. For contracts that do not exceed $500,000.00, the Surety Company:
   a. is licensed to do business in the State of Florida;
   b. holds a certificate of authority authorizing it to write surety bonds in this state and provides proof of same;
   c. has twice the minimum surplus and capital required by the Florida insurance code at the time the invitation to bid is issued;
   d. is otherwise in compliance with the provisions of the Florida insurance code; and
   e. holds a currently valid certificate of authority issued by the United States Department of Treasury under 31 U.S.C. ss 9304-9308.
2. For contracts over $500,000.00, all of the requirements of paragraph A.1 above apply. In addition, the surety company must have a current rating of at least Excellent (A or A-) all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc., of 75 Fulton Street, New York, New York 10038, with an underwriting limitation of at least two times the dollar amount of the agreement.
3. All bonds must be signed by an insurance agent who is licensed to do business in the state of Florida. The license may be held by a resident agent or a non-resident agent.

B. If the Surety for any Bond furnished by the Bidder is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the Bidder shall, within 5 calendar days thereafter, substitute another Bond and Surety, both of which shall be subject to the County's approval.

C. By execution of these bonds, the Surety acknowledges that it has read the Surety qualifications and Surety obligations imposed by the Contract Documents and hereby satisfies those conditions.

5. BREACH OF CONTRACT

Failure of Contractor to perform any of the services required by this contract within 10 days of receipt of written demand for performance from the County shall constitute a breach of contract.

6. LICENSES, PERMITS, FEES, AND TAXES

A. Pursuant to section 218.80, Florida Statutes, Pinellas County discloses to the contractor the following permits and fees generally which will have to be obtained by and will be payable by the contractor who is the successful bidder or proposer. Specific permits required will be shown in Appendix 1 – Permits. contractor will be reimbursed for the actual amount paid for the permits as evidenced by official receipts from the office(s) collecting the fees. No reimbursement will be provided for license fees. Permits/fees may include the following:

1. Impact Fees.
2. Inspection Fees.
3. Other permits or fees required by Pinellas County for the completion of the work, if applicable.
4. License fees: The Pinellas County Construction Licensing Board (PCCLB), an independent government agency, may require licensure or registration of a State of Florida construction license. These are not Pinellas County Government fees, but the contractor is hereby put on notice that fees may be required by the PCCLB. License fees are not reimbursable.

The foregoing list of fees apply only to those fees imposed by Pinellas County or imposed by another governmental agency which has assigned or delegated the responsibility for issuance of permits, licenses and conduction of inspections and attendant collection of fees to Pinellas County. The contractor is responsible for determining if other fees and permits are required by any other Federal, State, or local governmental entity, agency, or board.

SECTION B – SPECIAL CONDITIONS

B. All sales, consumer, use, and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the work, shall be paid by the contractor.

C. Compliance with permit and licenses requirements: The contractor shall comply with all applicable Local, State and Federal permit conditions and license requirements, applicable building and construction code requirements and such other rules and regulations as may apply to the prosecution of Work. Failure of the contractor to comply with the above-specified requirements shall result in contractor being prohibited from performing work pursuant to this agreement. Any additional costs incurred by the contractor as a result of non-compliance shall be the responsibility of the contractor and shall not be paid by the County. Additionally, contractor shall be required to pay any fines due as a result of non-compliance with the applicable requirements.

7. COMPLIANCE WITH LAWS

The contractor agrees to comply, at its own expense, with all Federal, State and Local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to the project, including but not limited to, those dealing with taxation, workers' compensation, equal employment, safety (including, but not limited to, the Trench Safety Act, Chapter 553.60-553.64, Florida Statutes), labor, work hours, labor conditions, environment, and related matters. If the contractor observes that the contract documents are at variance therewith, it shall promptly notify the Design Professional/Engineer/Project Manager in writing.

8. QUANTITIES

A. Quantities shown on the Bid Submittal Form are estimated for bidding purposes only and shall be verified by the contractor before placing orders for material. No payment shall be allowed for excess materials.

B. Payment for work performed under this agreement shall be based on the pay items and bid quantities shown on the Bid Submittal Form, subject to such extension of pay quantities as may be required.

C. Regardless of uncertainties of material supply and production at the time of bidding, bidders shall base their bids in strict accordance with items, materials and methods as set forth in the contract documents.

D. Pay items that are required to complete the scope of the Work, as defined by the project plans and specifications may be added to the list of pay items by the design professional/engineer/project manager at a later date through a change order process.

9. QUANTITIES REFLECTED IN PERMITTING DOCUMENTS

Any construction items or quantities reflected in the permitting documents, if any, required for this project are provided only for the purpose of enabling permitting authorities to assess the probable impact of the project on environmental concerns, and are in no way intended to reflect or represent actual construction items or quantities for pay purposes.

10. AWARD OF CONTRACT

The contract will be awarded for the entire Work (with or without optional/alternates items) to the lowest responsible and responsive bidder, provided that the bid is reasonable, and that it is in the best interest of the County to accept.

11. AFTER NOTICE OF AWARD TO CONTRACTOR

Subsequent communications between the County and the contractor shall be delivered to the County's representative. A Preconstruction Conference will be held following execution of the contract documents and prior to the Notice to Proceed.

12. INTENT OF THE CONTRACT DOCUMENTS

A. It is the intent of the contract documents to describe a functionally complete project (or portion thereof) to be constructed in accordance with the contract documents which combine to define the scope of work. Any work, materials or equipment that may reasonably be inferred from the contract documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in effect at the time the work is performed, except as may be otherwise specifically stated herein.

SECTION B – SPECIAL CONDITIONS

B. The contract documents and all referenced standards cited therein are essential parts of the agreement requirements. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete project.

C. Plans are intended to show general arrangements, design and extent of work. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the work, trades, subcontracts, or extent of any part of the work. In the event of a discrepancy between or among the plans, specifications or other contract document provisions, the contractor shall be required to comply with the provision which is the more restrictive or stringent requirement upon the contractor, as determined by the Design professional/engineer/project manager. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the work, whether or not called for by the contract documents.

13. STORAGE OF MATERIALS

Materials shall be so placed so as to permit easy access for proper inspection and identification of each shipment. Any material which has deteriorated, become damaged, or is otherwise unfit for use, as determined by the design professional/engineer/project manager, shall not be used in the Work, and shall be removed from the site by the contractor at its expense.

14. SANITATION

The contractor shall provide and maintain adequate sanitary conveniences for the use of persons employed on the Work. These conveniences shall be maintained at all times without nuisance, and their use shall be strictly enforced. The location of these conveniences shall be subject to the design professional/engineer/project manager's approval.

15. ERRORS AND OMISSIONS

The contractor shall not take advantage of any apparent error or omission in the contract documents. If any errors and/or omissions appear in the contract documents, or construction stakeout, the contractor shall immediately notify the Purchasing and Risk Management Division, in writing, of such errors and/or omissions. In the event the contractor knows or should have known of any errors and/or omissions and fails to provide such notification, it shall be deemed to have waived any claim for increased time or compensation it may have had and he shall be held responsible for the results and the costs of rectifying any such errors and/or omissions.

16. CONTRACTORS AND SUBCONTRACTORS

A. Qualification

1. The contractor shall assure that all personnel are competent, careful and reliable. All personnel must have sufficient skill and experience to properly perform the work assigned them. All personnel shall have had sufficient experience to perform their assigned task properly and satisfactorily and to operate any equipment involved and shall make due and proper effort to execute the work in the manner prescribed in the contract documents, or the design professional/engineer/project manager may take action as prescribed below.

2. Whenever the design professional/engineer/project manager shall determine that any person is incompetent, unfaithful, intemperate, disorderly or insubordinate, such person shall upon notice, be discharged from the work and shall not again be employed on it except with the written consent of the design professional/engineer/project manager. Should the Contractor fail to remove such person or persons the design professional/engineer/project manager may withhold all estimates which are or may become due, or may suspend the Work until such orders are complied with.

B. Identification

1. Within 10 days after the award of any subcontract, either by himself or a subcontractor, the contractor shall deliver to the design professional/engineer/project manager a statement setting forth the name and address of the subcontractor and a summary description of the work subcontracted.

2. The contractor shall be as fully responsible to the County for acts and omissions the subcontractor and of persons either directly or indirectly employed by the subcontractor, as the contractor is for the acts and omissions of persons directly employed by the contractor.

SECTION B – SPECIAL CONDITIONS

17. AUTHORITY OF THE DESIGN PROFESSIONAL/ENGINEER/PROJECT MANAGER AND DESIGN PROFESSIONAL/ENGINEER/PROJECT MANAGER'S DESIGNEES/REPRESENTATIVES

A. All Work shall be done in accordance with the contract documents.

B. It is agreed by the parties hereto that the design professional/engineer/project manager shall decide all questions, difficulties and disputes, of whatever nature, which may arise relative to the interpretation of the plans, construction, prosecution and fulfillment of the Agreement, and as to the character, quality, amount and value of any work done, and materials furnished, under or by reason of the agreement.

C. The County retains the right to inspect all work to verify compliance with the contract documents. The design professional/engineer/project manager may appoint such designees and/or representatives as desired. They shall be authorized to inspect all work done and all materials furnished. This right of inspection in no way means or implies County control or other supervision over the work done or the work site. This right is solely for the County's benefit and imposes no duties or responsibilities on the County and confers no rights on any other parties. Such inspection may extend to all or any part of the work and to the manufacture, preparation or fabrication of the materials to be used. Such designees and/or representatives shall not be authorized to revoke, alter or waive any requirement of the contract documents.

D. The designees and/or representatives shall be authorized to call to the attention of the contractor any failure of the work or materials to conform to the contract documents, and shall have the authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the design professional/engineer/project manager. The contractor shall be immediately notified in writing of any such suspension of the work and such notice shall state in detail the reasons for the suspension. The presence of the inspector or other designee shall in no way lessen the responsibility of the contractor.

E. Contractor's supervision

1. Prosecution of work: The contractor shall give the work the constant attention necessary to assure the scheduled progress and it shall cooperate fully with the design professional/engineer/project manager and with other contractors at Work in the vicinity.

2. Contractor's superintendent:

   a. The contractor shall at all times have on the work as his agent, a competent superintendent capable of thoroughly interpreting the plans and specifications and thoroughly experienced in the type of work being performed, who shall receive the instructions from the design professional/engineer/project manager or his/her authorized representatives. The superintendent shall have full authority to execute the orders or directions of the design professional/engineer/project manager and to supply promptly any materials, tools, equipment, labor and incidentals which may be required. Such superintendence shall be furnished regardless of the amount of work sublet.

   b. The contractor's superintendent shall speak and understand English, and at least one responsible person who speaks and understands English shall be on the project during all working hours.

3. Supervision for emergencies: The contractor shall have a responsible person available at or reasonably near the work site on a 24-hour basis, 7 days a week, in order that he/she may be contacted in emergencies and in cases where immediate action must be taken to maintain traffic or to handle any other problem that might arise. The contractor's responsible person for supervision for emergencies shall speak and understand English. The contractor shall submit, by certified mail, phone numbers and names of personnel designated to be contacted in cases of emergencies along with a description of the project location to the Florida Highway Patrol and all other local law enforcement agencies.

4. Worksite Traffic Supervisor: (When the work involves road construction/reconstruction or changes affect normal traffic patterns)

   a. The contractor shall have a worksite Traffic Supervisor who will be responsible for initiating, installing and maintaining all traffic control devices as described in Section 102 of the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, and in the plans. The Worksite Traffic Supervisor shall have at least one year of experience directly related to worksite traffic control in a supervisory or responsible capacity and shall be certified by the American Traffic Safety Services Association Worksite Traffic Supervisor Certification Program or an equal approved by the Florida Department of Transportation. Approved alternate Worksite Traffic Supervisors may be used when necessary.

SECTION B – SPECIAL CONDITIONS

b. The Worksite Traffic Supervisor shall be available on a 24 hour per day basis and shall review the project on a day to day basis as well as being involved in all changes to traffic control. The Worksite Traffic Supervisor shall have access to all equipment and materials needed to maintain traffic control and handle traffic related situations. The Worksite Traffic Supervisor shall ensure that routine deficiencies are corrected within a 24-hour period.

c. The Worksite Traffic Supervisor shall be available on the site within 45 minutes after notification of an emergency situation, prepared to positively respond to repair the work zone traffic control or to provide alternate traffic arrangements.

d. Failure of the Worksite Traffic Supervisor to comply with the provisions of the Sub-article may be grounds for decertification or removal from the Project or both. Failure to maintain a designated Worksite Traffic Supervisor or failure to comply with these provisions will result in temporary suspension of all activities except traffic and erosion control and such other activities deemed to be necessary for Project maintenance.

F. General Inspection Requirements

1. Cooperation by the Contractor: No work shall be done nor materials used, without suitable supervision or inspection by the design professional/engineer/project manager or his/her representative, and the contractor shall furnish the design professional/engineer/project manager with every reasonable facility for ascertaining whether the work performed and materials used are in accordance with the requirements and intent of the plans and specifications. If the design professional/engineer/project manager so requests, the contractor shall, at any time before final acceptance of the work, remove or uncover such portions of the finished work as may be directed. After examination, the contractor shall restore the uncovered portions of the work to the standard required by the specifications. Should the Work so exposed or examined prove unacceptable, the uncover or removal, and the replacing of the covering or making good of the parts removed, shall be at the contractor's expense. However, should the work thus exposed or examined prove acceptable, the uncovering or removing, and the replacing of the covering or making good of the parts removed, shall be paid for as unforeseeable Work.

2. Failure of the design professional/engineer/project manager to reject work during construction: If, during or prior to construction operations, the design professional/engineer/project manager should fail to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject shall in no way prevent his/her later rejection when such defect is discovered, or obligate the County to final acceptance, and the Contractor shall make no claim for losses suffered due to any necessary removals or repairs of such defects.

3. Failure to remove and renew defective materials and work:

   a. Should the contractor fail or refuse to remove and renew any defective materials used or work performed, or to make any necessary corrections in an acceptable manner and in accordance with the requirements of the specifications, within the time indicated in writing, the design professional/engineer/project manager shall have the authority to cause the unacceptable or defective materials or work to be repaired, removed and renewed, as may be necessary; all at the contractor's expense.

   b. Any expense incurred by the County in making these repairs, removals, or renewals, which the contractor has failed or refused to make, shall be paid for out of any moneys due or which may become due the contractor, or may be charged against the performance bond. Continued failure or refusal on the part of the Contractor to make any or all necessary repairs promptly, fully and in an acceptable manner shall be sufficient cause for the County, at its option, to perform the Work with its own organization, or to contract with any other individual, firm or corporation to perform the Work. All costs and expenses incurred thereby shall be charged against the defaulting Contractor and the amount thereof deducted from any moneys due or which may become due him, or shall be charged against the applicable bond. Any Work performed subsequent to forfeiture of the Agreement, as described in this Paragraph, shall not relieve the Contractor in any way of its responsibility for the Work performed by it.

4. Inspection by the Federal Government: When the Work involves the Federal Government it is to pay a portion of the cost of construction the construction Work will be subject to inspection by its representatives as they may deem necessary, but such inspection will in no case make the Federal Government a party to Agreement.

SECTION B – SPECIAL CONDITIONS

18. CONTRACT TIME AND TIME EXTENSIONS

A. Unless otherwise provided, Agreement Time shall mean the number of consecutive calendar days from the commencement date noted in the Notice to Proceed to the date on which all Work is to be completed. The Contractor shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and material suppliers, as well as coordinate its Work with the Work of other contractors so that his Work or the Work of others shall not be delayed or impaired by any act or omission of any act by a Contractor. The Contractor shall coordinate and schedule the Work to allow, without delays to the Contract, for any sampling and testing activities deemed necessary by the Design Professional/Engineer/Project Manager. The Contractor shall be solely responsible for all construction means methods, techniques, sequences and procedures, as well as coordination of all portions of the Work under the Contract Documents.

B. Should the Contractor be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of the Contractor, and not due to his fault or neglect, including but not restricted to acts of God or the public enemy, acts of government, fires, floods, discovery of pre-existing hazardous materials, utility conflicts, epidemics, quarantine regulations, strikes or lockouts, the Contractor shall notify the Design Professional/Engineer/Project Manager in writing within 2 regular Work days after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which the Contractor may have had to request the time extension. It is the contractor's responsibility to safely and appropriately secure the worksite prior to the approach of unfavorable weather conditions such as the onset of a tropical storm, hurricane, or similar event.

C. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatsoever, including those for which the County may be responsible, in whole or in part, shall relieve the Contractor of his duty to perform or give rise to any right to damages or additional compensation from the County. It being expressly acknowledged and agreed by the parties hereto that the Contractor shall receive no damages for delay. The Contractor's sole remedy, if any, against the County shall be the right to seek an extension to the Contract Time. Such extensions of time will not be granted for delays caused by unfavorable weather, ground conditions related to the weather, inadequate construction force or for the failure of the Contractor to timely order equipment or materials.

D. If the Contractor complies with the 2 regular Workdays' notice requirement, the Design Professional/Engineer/Project Manager shall ascertain the facts and the extent of the delay being claimed and recommend to the Board an extension to the Contract Time when, in the Design Professional/Engineer/Project Manager's sole judgment, the findings of fact justify such an extension, and the Design Professional/Engineer/Project Managers finding of fact shall be final and conclusive on the parties. The Contractor shall cooperate with the Design Professional/Engineer/Project Manager's investigation of the delays by providing any schedules, correspondence or other data that may be required to complete the findings of fact. Extensions of the Contract Time must be authorized by Change Order approved by the Board.

19. PROSECUTION OF WORK ON SATURDAYS, SUNDAYS AND RECOGNIZED HOLIDAYS

A. All Work must be done during Regular Workday hours (7:00 AM to 7:00 PM) Monday through Friday. The County may require alternative Work hours due to specific individual Project conditions when necessary. Work will not be done beyond hours specified herein or on Saturdays, Sundays or holidays unless authorized in advance by the Design Professional/Engineer/Project Manager to meet special requirements. Contractor must comply with the County noise ordinance.

B. Work will not be permitted on Saturdays, Sundays and recognized Holidays unless permission to Work has been requested in writing by the Contractor and approval, in writing, has been granted by the Design Professional/Engineer/Project Manager. Request for permission to Work must be received by the Design Professional/Engineer/Project Manager no less than 24 hours prior to the regular Workday.

C. No Work will be permitted on:

New Year's Day
Independence Day
Thanksgiving Day
Christmas Day

D. When approval is granted in accordance with the provisions stated above, Work will be allowed on:

Martin Luther King, Jr. Day
Memorial Day

SECTION B – SPECIAL CONDITIONS

Labor Day
Veterans Day
Friday after Thanksgiving Day

If Christmas or New Year's Day shall fall on Tuesday or Thursday, the preceding Monday or the following Friday shall be recognized as a holiday also. If any recognized holiday shall fall on a Saturday, the preceding Friday shall be observed as a holiday. If any recognized holiday shall fall on a Sunday, the following Monday shall be observed as a holiday.

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20. LIQUIDATED DAMAGES

A. The County and the Contractor recognize that, since time is of the essence for this Agreement, the County will suffer financial loss if the Work is not completed within the time specified.

B. The County shall be entitled to assess, as liquidated damages, but not as a penalty, **$10,000.00 per calendar day that exceeds the duration for Phase 1, and $2,500.00 per calendar day that exceeds the substantial completion** date after the Contract Time. The Project shall be deemed to be completed on the date the Work is deemed complete to the satisfaction of the Design Professional/Engineer/Project Manager. The Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the above-noted liquidated damages as a penalty. The parties agree that the liquidated damages sum represents a fair and reasonable estimate of the County's actual damages at the time of contracting if the Contractor fails to complete the Work in a timely manner.

21. PINELLAS COUNTY'S COMMITMENT TO SAFETY

A. All work shall be completed in a safe manner and consideration for cost of any equipment needed to perform contract in a safe manner, including personal protection equipment, shall be included in the contract bid.

B. If County discovers an unsafe act or condition in contractor's performance under this contract, County shall inform Design Professional/Engineer/Project Manager of unsafe act or condition. If unsafe act or condition poses the threat of imminent danger, Design Professional/Engineer/Project Manager shall be authorized to stop work until unsafe act or condition is remedied. No time extension shall be allowed. If remedy causes contractor to fail to meet the time specified, County shall be entitled to liquidated damages as outlined under 21.B. If unsafe act or condition is does not pose the threat of imminent danger, Design Professional/Engineer/Project Manager shall be authorized to require contractor remedy the unsafe act or unsafe condition as soon as possible, but in no event later than 3 days from date of notice. No time extension shall be allowed. If remedy causes contractor to fail to meet the time specified, County shall be entitled to liquidated damages as outlined under 21.B.

22. CHANGES IN THE WORK

A. Without invalidating the Agreement, the Design Professional/Engineer/Project Manager may at any time, by written order, direct extra Work within the general scope or alter the Work by addition or deduction of items that do not alter the scope of the Work. Such changes may be affected by Field Order or by other written order. Such changes shall be binding on the Contractor. No officer, employee, or agent of the County is authorized to direct any extra or change Work orally.

B. If changes to the Scope of the Work are required or if the Contract time or the total Contract Amount is increased by the additional Work, a Change Order approved by the Board will be required.

C. The value of such extra Work or change shall be determined by schedule of values if applicable unit values are set forth in the Agreement. The amount of the change shall be computed from such values and added to or deducted from the Agreement Amount. If the applicable unit values are not in the Contract, the value of such extra Work or change shall be determined by negotiation.

D. Should a Change Order be required, and the County and the Contractor are unable to agree on the requested change, the Contractor shall, nevertheless, promptly perform the change as directed in writing by the Design Professional/Engineer/Project Manager. If the Contractor disagrees with the Design Professional/Engineer/Project Manager's adjustment determination, the Contractor must make a claim pursuant to the Claims and Dispute Section herein, or else be deemed to have waived any claim on this matter it might otherwise have had.

E. For new Work not covered by schedule of values, the amount of an increase shall be limited to the Contractor's reasonable direct labor and material costs and reasonable actual equipment costs as a result of the change (including allowance for labor burden costs) plus a maximum 10% markup for all overhead and profit. In the event

such change Work is performed by a subcontractor, a maximum 10% markup for all overhead and profit for all subcontractors' direct labor and material costs and actual equipment costs shall be permitted, with a maximum 5% markup thereon by the Contractor for all of its overhead and profit, for a total overall maximum markup of 15% of the amount of change Work. Sales and use taxes are not subject to the markup allowance. Material provided by the Contractor, for use by the Subcontractor, is only allowed the 10% markup by the Contractor. All compensation due the Contractor and any Subcontractor or sub-subcontractor for field and home office overhead is included in the markups noted above.

F. In an emergency endangering life or property, or as expressly set forth herein, the Design Professional/Engineer/Project Manager has the authority to order the necessary Work in writing. The County shall not be liable to the Contractor for any increased compensation without such written order. The payment authorized by a written order shall represent full and complete compensation to the Contractor for labor, materials, incidental expenses, overhead, profit, impact costs, and time associated with the Work authorized by such written order.

G. Execution by the Contractor of a properly authorized Change Order (see Appendix Sample Change Order) shall be considered a waiver of all claims or requests for additional time or compensation for any activities prior to the time of execution related to items included in the Change Order.

23. CLAIMS AND DISPUTES

A. A Claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between the County and the Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate a claim shall rest with the party making the Claim.

B. Claims by the Contractor shall be made in writing to the Design Professional/Engineer/Project Manager within two (2) regular Workdays after the commencement of the event giving rise to such Claim or else the Contractor shall be deemed to have waived the claim. Written supporting data shall be submitted to the Design Professional/Engineer/Project Manager within 15 calendar days after the occurrence of the event, unless the County grants additional time in writing, or else the Contractor shall be deemed to have waived the Claim. All Claims shall be priced in accordance with provisions of the section in this document entitled Changes in the Work.

C. The Contractor shall proceed diligently with its performance as directed by the County, regardless of any pending Claim, action, suit, or administrative proceeding, unless otherwise agreed to by the County in writing. The County shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.

24. MEASUREMENT AND PAYMENT

A. All Work completed under the terms of this Agreement shall be measured according to United States Standard Measures.

B. All measurements shall be taken horizontally or vertically, unless specifically provided otherwise.

C. In the measurement of items to be paid for on the basis of area of finished Work, when the pay quantity is designated to be determined by calculation, the lengths and/or widths to be used in the calculations shall be the station-to-station dimensions shown on the Plans, the station-to-station dimensions actually constructed within the limits designated by the Design Professional/Engineer/Project Manager, or the final dimensions measured of the completed Work within the lines shown on the Plans or designated by the Design Professional/Engineer/Project Manager. The method, or combination of methods, shall be those which reflect with reasonable accuracy the actual area of finished Work as determined and authorized by the Design Professional/Engineer/Project Manager.

D. No payment will be made for either construction over a greater area than authorized, or for material moved from outside of stakes and data shown on the Plans, except when such Work is performed upon instructions of the Design Professional/Engineer/Project Manager.

E. The Contractor shall accept compensation provided under the terms of this Agreement as full payment for furnishing all materials and for performing all Work contemplated and embraced under this Agreement. Such compensation shall also be for any and all loss or damage arising out of the nature of the Work or from the action of the elements, or from any unforeseen difficulties or obstructions encountered during the Agreement Time until final acceptance by the County.

F. Whenever any change, or combination of changes in the Plans, results in an increase or decrease in the original Contract quantities, and the Work added or decreased/eliminated is of the same general character as that called

for in the Plans, the Contractor shall accept payment in full at the original schedule of values for the actual quantity of Work performed, with no allowance for any loss of anticipated profits.

G. Where the pay quantity for an item is designated to be Lump Sum, and the Plans or Specifications indicate an estimated quantity, compensation for that item will be adjusted proportionately if a plan change results in a significant change in the quantity from such estimated plan quantity.

H. Failure to construct any item to plan or authorized dimensions within the Specification tolerances shall result in reconstruction by the Contractor to acceptable tolerances at no additional cost to the County, acceptance at no pay, or acceptance at reduced final pay as determined by the Design Professional/Engineer/Project Manager. Adjustments to final pay for those items designated to be paid on the basis of Lump Sum quantity under these provisions shall not be made unless such adjustments results in an aggregate change per item of more than $1,000.00 for earthwork items, or more than $100.00 for any other item.

I. At the discretion of the Design Professional/Engineer/Project Manager, the County will allow partial payments for new materials that will be permanently incorporated into the Project and are stored in approved locations in the Project vicinity. Said materials are described as having the greatest impact on completing the Project on time; and can fluctuate as the Project progresses. Contractor shall store materials so that they will not be damaged by the elements and in a manner that identifies the Project on which they are to be used. The following conditions apply to all payments for stored materials.

1. There must be reasonable assurance that the stored material will be incorporated into the specific Project on which partial payment is made.
2. The stored material must be approved as meeting applicable Specifications.
3. The total quantity for which partial payment is made shall not exceed the estimated total quantity required to complete the Project.
4. The Contractor shall furnish the County with copies of certified invoices to document the value of the materials received. The contractor's documentation for stored materials payment shall also include a reconciliation of the beginning balance, materials purchased, materials used, and ending balance. The amount of the partial payment will be determined from invoices for the material not to exceed one half of the unit value bid in the Contract.
5. Delivery charges for materials delivered to the jobsite will be included in partial payments if properly documented on the certified invoices for the materials received.
6. Partial payments will not be made for materials which were stored prior to award of the Contract for the Project.
7. If payment is made the materials shall become the property of the County. The Contractor shall be responsible for loss or theft and shall replace, at the Contractor's expense, any such materials lost for any reason.

25. PAYMENTS TO CONTRACTOR

A. Prior to submitting its first monthly Application for Payment, Contractor shall submit to the Design Professional/Engineer/Project Manager, for its review and approval, a Schedule of Values based upon the "Contract Amount" and the Construction Progress Schedule numbering system format listing the major elements of the Work and the dollar value for each element. After its approval by the County, this Schedule of Values shall be used as the basis for Contractor's monthly Application for Payment. This Schedule shall be updated and submitted each month to the Design Professional/Engineer/Project Manager along with a completed and notarized copy of the Application for Payment and any Payment Continuation forms.

B. Prior to submitting its first monthly Application for Payment, Contractor shall submit to the Design Professional/Engineer/Project Manager a complete list of all of its proposed subcontractors and materialmen, showing the Work and materials involved and the dollar amount of each proposed subcontract and purchase order. The first Application for Payment shall be submitted no earlier than 30 days after the Commencement Date.

C. If payment is requested on the basis of materials and equipment not incorporated into the Work, but delivered and suitably stored at the site or at another location agreed to by the Design Professional/Engineer/Project Manager in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that the County has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate

property insurance and other arrangements to protect the County's interest therein, all of which shall be subject to the County's satisfaction. Contractor shall complete a Schedule of Stored Materials form.

D. Contractor shall submit 3 notarized original copies of its monthly Application for Payment to Design Professional/Engineer/Project Manager for Work performed during the previous month. Invoices received after the previous month Application for Payment shall be considered for payment as part of the next month's application. Within 10 calendar days after receipt of each Application for Payment, Design Professional/Engineer/Project Manager shall submit to the County the approved Application for Payment in the amount recommended by Design Professional/Engineer/Project Manager as being due and owing Contractor. The County shall pay Contractor that portion of Design Professional/Engineer/Project Manager's approved Application for Payment, which the County approves as being due and owing Contractor in accordance with §218.70-79, Florida Statutes ("Local Government Prompt Payment Act").

E. Monthly payments to Contractor shall in no way imply approval or acceptance of Contractor's Work.

F. Monthly payments will be made to the Contractor. Estimates of quantities will be prepared monthly by the Contractor, based on unit values or the Schedule of Values, as applicable to the Project. The Design Professional/Engineer/Project Manager's project representative will be required to verify these estimates with the Contractor and sign the estimate in agreement. The payment estimate will then be checked by the Design Professional/Engineer/Project Manager, who will reconfirm with the Contractor any required corrections, before further processing of payments.

G. Retainage: If progress satisfactory to the County is being made by the Contractor, the Contractor will receive partial payments on this Agreement as the Work progresses, based upon estimates of the amount of Work done less payments previously made. In each case 5% of the Agreement Amount earned shall be retained until satisfactory completion and final acceptance of the Project, and final compliance by the Contractor with all terms and conditions of the Contract Documents. 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.

OR

H. Progress Payments: If progress satisfactory to the County is being made by the Contractor, the Contractor will receive partial payments on this Agreement 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.

I. Invoices: See Section A General Conditions Payments/Invoices

26. <u>ACCEPTANCE AND FINAL PAYMENT</u>

A. Final Inspection: Whenever all materials have been furnished, all Work has been performed, and the construction specified by the Contract has been satisfactorily completed, the Consultant and Engineer/Project Manager will make the final inspection.

B. Maintenance of Work: The Contractor shall maintain all Work in first-class condition until final inspection is completed and accepted by the Design Professional/Engineer/Project Manager. All Bonds and Insurance shall be maintained until final acceptance by the Board.

C. Substantial Completion: When the Work, or any portion thereof, as designated by the County is sufficiently complete, in accordance with the Contract Documents, and is ready for its intended use, the Design Professional/Engineer/Project Manager and any other invited parties shall make an inspection of the Work or portion thereof so designated as complete to verify its completeness and develop a punch list of items needing completion or correction before final payment can be made. The County shall have the right to exclude the Contractor from these portions of the Work designated as complete after the inspection, however, the Contractor will have reasonable access to complete or correct items on the punch list. The punch list shall be completed by the Design Professional/Engineer/Project Manager within the timeframes provided by Florida Statute Section 218.735(7)(a).

D. Final Acceptance

SECTION B – SPECIAL CONDITIONS

1. Whenever the Work provided for under the Agreement has been completely performed by the Contractor, and the final inspection has been made by the Design Professional/Engineer/Project Manager, a final pay request showing the value of the Work will be prepared by the Design Professional/Engineer/Project Manager as soon as the necessary measurements and computations can be made. All prior estimates and payments shall be subject to correction in the final estimate and payment. The amount of this estimate, less any sums that may have been deducted or retained under the provisions of the Agreement, will be paid to the Contractor as soon as practicable, after the Contractor has furnished a sworn Affidavit, to the effect that all bills are paid and no suits are pending, and after the Contractor has agreed in writing to accept the balance due, as determined by the County, as full settlement of its account under Agreement and of all claims in connection therewith.
2. The surety on the Contract bonds consents, by completion of its portion of the affidavit and surety release subsequent to the Contractor's completion of its portion, to final payment to the Contractor and agrees that the making of such payment shall not relieve the surety of any of its obligations under the bonds.

E. Waiver of Claims

1. The Contractor's acceptance of final payment shall constitute a full waiver of any and all Claims by the Contractor against the County arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by the Contractor as unsettled at the time the final estimate is prepared.
2. Neither the acceptance of the Work nor payment by the County shall be deemed to be a waiver of the County's rights to enforce any continuing obligations of the Contractor hereunder or to the recovery of damages for defective Work not discovered by the County at the time of final inspection.

F. Termination of Contractor's Responsibility: The Agreement will be considered complete when all Work has been completed and has been accepted by the Board. The Contractor will then be released from further obligation except as set forth in his bonds and in this Division.

G. Recovery Rights, Subsequent to Final Payment: The County reserves the right, should an error be discovered in the partial or final estimates, or should proof of defective Work or materials used by or on the part of the Contractor be discovered after the final payment has been made, to claim and recover from the Contractor or its surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the Work and materials.

27. PAYMENTS WITHHELD

To the maximum extent permitted by §218.735, Florida Statutes (2007), the Design Professional/Engineer/Project Manager may decline to certify for payment or County may decline to approve any Certificate for Payment, or portions thereof issued by Design Professional/Engineer/Project Manager, because of subsequently discovered evidence or subsequent inspections. County may nullify the whole or any part of any Certificate for Payment previously issued and County may withhold any payments otherwise due Contractor under this Agreement or any other agreement between County and Contractor, to such extent as may be necessary in County's opinion to protect it from loss because of: (a) defective Work not remedied; (b) third party claims filed or reasonable evidence indicating probable filing of such claims; (c) failure of Contractor to make payment properly to subcontractors or for labor, materials or equipment; (d) reasonable doubt that the work can be completed for the unpaid balance of the Contract Amount; (e) reasonable indication that the Work will not be completed within the Contract Time; (f) unsatisfactory prosecution of the Work by Contractor; or (g) any other material breach of the Contract Documents. If these conditions are not remedied or removed, County may, after 3 days written notice, rectify the same at Contractor's expense. County also may offset against any sums due Contractor the amount of any liquidated or un-liquidated obligations of Contractor to County, whether relating to or arising out of this Agreement or any other agreement between Contractor and County.

28. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the County shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement Amount or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

SECTION B – SPECIAL CONDITIONS

29. LANDS FOR WORK AND ACCESS THERETO

A. The County will furnish and define the limits of land for access to the construction site and for the site proper. All information shown in the Contract Documents constitutes the extent of land provided by the County. Any and all other lands required by the Contractor shall be procured by the Contractor at the Contractor's expense.

B. As the work progresses, the Contractor shall keep the site reasonably clear of rubbish, trash, waste and other disposable materials on a daily basis. If the Contractor allows the site to become littered and unsightly, any payments otherwise due may be withheld until the Contractor cleans up the site to the satisfaction of the Design Professional/Engineer/Project Manager. If the Contractor fails to clean-up the site, the County may choose to clean-up the site at the Contractor's expense.

C. Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the Contractor only with the approval of the Design Professional/Engineer/Project Manager after obtaining necessary permits and shall be built with labor and materials furnished by the Contractor without expense to the County. Such temporary buildings and/or utilities shall remain the property of the Contractor and will be removed by the Contractor at its expense upon the completion of the Work. With the written consent of the Design Professional/Engineer/Project Manager, such buildings and/or utilities may be abandoned and need not be removed.

D. The Contractor shall confine all construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and shall not unreasonably encumber the Project site with construction equipment or other material or equipment. The Contractor shall assume full responsibility for any damage to any such land or area, or to the County or occupant thereof, or any land or areas contiguous thereto, resulting from the performance of the Work.

30. SITE INVESTIGATION

A. Each Contractor shall visit the site of the proposed Work and fully acquaint itself with conditions relating to construction and labor so that it may fully understand the facilities, difficulties and restrictions attending the execution of Work under the Agreement. The Contractor shall thoroughly examine and be familiar with the Contract Documents. Failure or omission of the Contractor to receive or examine any form, instrument, addendum or other documents, or to visit the site and acquaint himself with conditions existing thereon, shall in no way relieve the Contractor from any obligation with respect to the Agreement. Pinellas County does not warrant the accuracy or completeness of these reports, soil samples, or any other site condition information or data made available including, but not limited to, underground utility location. The submission of a bid shall be taken as prima-facie evidence of compliance with this section.

The County does not warrant the accuracy or completeness of these reports, soil samples, or any other site condition information or data made available including, but not limited to, underground utility location. The submission of a bid shall be taken as prima-facie evidence of compliance with this paragraph.

B. The Contractor acknowledges that he has satisfied himself as to the nature and location of the Work; the general and local conditions, including but not restricted to, those bearing upon transportation, disposal, handling and storage of materials; availability of labor, water, electric power, roads; and uncertainties of weather, river stages, tides or similar physical conditions at the site; the conformation and conditions of the ground; the character of equipment and facilities needed preliminary to and during prosecution of the Work.

C. The Contractor further acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials, obstacles, or conditions to be encountered.

D. Any failure by the Contractor to acquaint itself with any aspect of the Work or with any of the applicable conditions shall not relieve the Contractor from responsibility for adequately evaluating the difficulty or cost of successfully performing the Work under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

E. The County assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the County. The County also assumes no responsibility for any understanding or representations made by its officers or agents during or prior to the execution of this Agreement, unless such understanding or interpretations are made in writing.

31. PROTECTION OF EXISTING STRUCTURES, UTILITIES, WORK AND VEGETATION

A. Location of existing structures and utilities provided in the Contract Documents are approximate only. Any damage to existing structures or Work of any kind, or the interruption of a utility service resulting from failure to

comply with the requirements of the Contract Documents, shall be repaired or restored promptly by, and at the expense of the Contractor.

B. The Contractor will preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the site which do not unreasonably interfere with the construction as may be determined by the Design Professional/Engineer/Project Manager. The Contractor will be responsible for all unauthorized cutting or damaging of trees and shrubs, including damage due to careless operation of equipment, stockpiling of materials or tracking of grass areas by equipment.

C. The Contractor's attention is directed to the fact that Type "A" or Type "B" TREE PROTECTION BARRIERS, as per Pinellas County Design Professional/Engineer/Project Manager Department Index No. 1111, shall be constructed when called for on the Plans, or as directed by the Design Professional/Engineer/Project Manager. Barriers shall be maintained in place until their removal is directed by the Design Professional/Engineer/Project Manager.

D. Care will be taken by the Contractor in felling trees authorized for removal to avoid unnecessary damage to vegetation that is to remain in place. Any limbs or branches of trees broken during such operations shall be trimmed without cutting into the trunk and left with a clean cut and a small stub. The Contractor will be liable for or may be required to replace or restore at its own expense, all vegetation that may be destroyed or damaged due to the Contractor's failure to protect and preserve same as required herein.

E. Where the Contractor hauls material or equipment to the Project over roads and bridges on the State road system, County road system or City street system, and such use causes damage, the Contractor shall immediately, at its expense, repair such road or bridge to as good a condition as before the hauling began. Such hauling shall be conducted in accordance with all applicable environmental and safety regulations.

F. The Contractor shall fully protect the Work from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. If the Contractor or any one for whom the Contractor is legally liable for is responsible for any loss or damage to the Work, or other Work or materials of the County or County's separate contractors, the Contractor shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due the Contractor.

G. The Contractor shall not disturb any benchmark established by the County with respect to the Project. If the Contractor, or its subcontractors, agents or any one for whom the Contractor is legally liable, disturbs County benchmarks, the Contractor shall immediately notify the Design Professional/Engineer/Project Manager. The County shall have the benchmarks reestablished and the Contractor shall be liable for all costs incurred by the County associated therewith.

32. <u>OTHER WORK</u>

A. The Contractor will cooperate with County forces or others who may be engaged in authorized Work prior to final completion of the Project.

B. The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner and that service rendered by these parties will not be interrupted.

C. The County may perform other Work related to the Project at the site by the County's own forces, have other Work performed by utility owners or let other direct contracts. If the fact that such other Work is to be performed is not noted in the Contract Documents, notice thereof will be given to the Contractor. If the Contractor believes that such performance will involve additional expense to the Contractor or require additional time, the Contractor shall send written notice of that fact to the County and the Design Professional/Engineer/Project Manager within 48 hours of being notified of the other Work. If the Contractor fails to send the above required 48 hour notice, the Contractor will be deemed to have waived any rights it otherwise may have had to seek an extension to the Agreement Time or adjustment to the Agreement Amount.

The Contractor shall afford each utility owner and other contractors (or the County, if the County is performing the additional Work with the County's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such Work and shall properly connect and coordinate its Work with theirs. The Contractor shall not endanger any Work of others by cutting, excavating or otherwise altering their Work and will only cut or alter their Work with the written consent of the Design Professional/Engineer/Project Manager and the others whose Work will be affected.

SECTION B – SPECIAL CONDITIONS

D. If any part of the Contractor's Work depends, for proper execution or results, upon the Work of any other contractor other than a subcontractor or utility owner, the Contractor shall inspect and promptly report to the Design Professional/Engineer/Project Manager, in writing, any delays, defects or other problems in such other Work that render it impossible for the Contractor to obtain proper execution or results. The Contractor's failure to report will constitute an acceptance of the other Work as fit and proper for integration with the Contractor's Work.

33. TERMINATION

A. Termination for Default

1. The Contractor shall be considered in material default of the Agreement and such default shall be considered cause for the County to terminate the Agreement, in whole or in part, as further set forth in this paragraph, for any of the following reasons:

   a. Failing to begin Work under the Contract Documents within the time specified herein;

   b. Failing to properly and timely perform the Work as directed by the Design Professional/Engineer/Project Manager or as provided for in the approved Construction Progress Schedule;

   c. Performing the Work unsuitably or neglecting or refusing to remove materials or to correct or replace such Work as may be rejected as unacceptable, unsuitable or otherwise defective;

   d. Discontinuing the prosecution of the Work;

   e. Failing to resume Work that has been suspended within a reasonable time after being notified to do so;

   f. Becoming insolvent or declared bankrupt, or committing any act of bankruptcy;

   g. Allowing any final judgment to stand unsatisfied for more than ten days;

   h. Making an assignment for the benefit of creditors;

   i. Failing to obey laws, ordinances, regulations or other codes of any governmental authority with jurisdiction on the Project;

   j. Failing to perform or abide by the terms or spirit of the Contract Documents.

2. The County shall notify the Contractor in writing of the Contractor's default. If the County determines that the Contractor has not taken substantial steps toward effecting a remedy or cure of the default or defaults in its performance within 7 calendar days following receipt by the Contractor of written notice of default or defaults, then the County, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties, and without prejudice to any other right it may be entitled to hereunder or by law, may terminate the Contractor's right to proceed under this Agreement, in whole or in part, and may take possession of the Work and any materials, tools, equipment, and appliances of the Contractor, take assignments of any of the Contractor's subcontracts and purchase orders and complete the Contractor's Work by whatever means, method or agency which the County, in its sole discretion, may choose.

3. If the County deems any of the foregoing remedies necessary, the Contractor agrees it shall not be entitled to receive any further payment until after the Work is completed. All money expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses, (including Design Professional/Engineer/Project Manager and Architectural fees) or damages incurred by the County incident to such completion, shall be deducted from the Agreement Amount, and if such expenditures exceed the unpaid balance of the Agreement Amount, the Contractor agrees to pay promptly to the County on demand, the full amount of such excess, including costs of collection, and interest thereon at the maximum legal rate of interest until paid.

   The liability of the Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained and obligations assumed by the County in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefore or relating to the Work, and in settlement, discharge, or compromise of any claims, demands, suits or judgments pertaining to or arising out of the Work hereunder.

4. If after notice of termination of the Contractor's right to proceed pursuant to this subparagraph A, "Termination for Default", it is determined for any reason that the Contractor was not in default or that its default was

excusable, or that the County is not entitled to the remedies against the Contractor provided herein, then the Contractor's remedies against the County shall be the same as and limited to those afforded the Contractor pursuant to the Termination for Convenience subparagraph B below.

B. Termination for Convenience and Right of Suspension

1. The County shall have the right to terminate or suspend this Agreement, in whole or in part; without cause upon 30 calendar days written notice to the Contractor.

2. In the event of such termination or suspension for convenience, the Contractor's sole recovery against the County shall be limited to that portion of the Agreement Amount earned through the date of termination or suspension, together with any retainage withheld and reasonable termination or suspension expenses incurred, but the Contractor shall not be entitled to any other or further recovery against the County, including, but not limited to, damages and any anticipated profit or Work not performed.

34. SUBSTITUTIONS/ APPROVED EQUAL(S) PRIOR TO BID OPENING

A. The materials, products and equipment described in the Contract Documents established a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

B. No substitution will be considered prior to receipt of Bids unless a written request for approval has been received by the Pinellas County Purchasing Department, by the question deadline on page 1. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for an evaluation. A statement setting forth any changes in other materials, equipment or other Work that incorporation of the substitute would require shall be included. The burden of proof of the merit of the proposed substitute is upon the proposer. The decision of approval or disapproval of a proposed substitution shall be final.

C. If the Purchasing Director approves any proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.

35. SUBMITTALS AFTER AWARD

A. Schedule

1. At or before the Preconstruction Conference, the Contractor shall submit a preliminary Construction Progress Schedule to the Design Professional/Engineer/Project Manager. The County will review the schedule and provide the Contractor with comments. Within 10 days after receipt of the County's comments, the Contractor shall deliver to the Design Professional/Engineer/Project Manager a Construction Progress Schedule in a form satisfactory to the Design Professional/Engineer/Project Manager and showing the proposed dates of commencement and completion of each of the various subdivisions of Work. At or before the Preconstruction Conference, the Contractor shall provide to the County a breakdown of estimated monthly payments for the entire duration of the Agreement period.

2. For lump sum items within Section E, the Contractor shall also furnish the Design Professional/Engineer/Project Manager with a detailed estimate giving a complete breakdown of the value of items of Work to be paid for the purpose of making partial payments thereon. The values employed in making up this estimate and the schedule will be used only for determining the basis of partial payment and will not be considered as fixing a basis for additions to or deductions from the Agreement Amount.

3. The Construction Progress Schedule shall be updated monthly by the Contractor. All updates to the Construction Progress Schedule shall be subject to the Design Professional/Engineer/Project Manager's review and County’s written approval. Contractor shall submit the updates to the Progress Schedule with its monthly applications for payment noted below. Contractor's submittal of these monthly updates and Design Professional/Engineer/Project Manager’s written approval of same shall be a condition precedent to County's obligation to pay Contractor.

4. The Work shall be planned and carried out so as to minimize the interruption of existing services, and/or traffic, or as directed by the Design Professional/Engineer/Project Manager.

B. Contractor shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop Plans, data, test results, schedules and samples. Contractor shall submit all such materials at its own expense and in such form and manner as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof. Incomplete submittals will be returned to the Contractor. The Design Professional/Engineer/Project Manager will record time for submittals

handled more than twice. The Contractor shall reimburse the County for charges of the Design Professional/Engineer/Project Manager and his/her consultants for providing more than two reviews of submittals.

C. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by the Design Professional/Engineer/Project Manager if sufficient information is submitted by Contractor to allow the Design Professional/Engineer/Project Manager to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Design Professional/Engineer/Project Manager from anyone other than Contractor and all such requests must be submitted by Contractor to Design Professional/Engineer/Project Manager within 30 calendar days after notice of award is received by Contractor.

D. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make application to Design Professional/Engineer/Project Manager for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with County for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Design Professional/Engineer/Project Manager in evaluating the proposed substitute. Design Professional/Engineer/Project Manager may require Contractor to furnish, at Contractor's expense, additional data about the proposed substitute.

E. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to Design Professional/Engineer/Project Manager, if Contractor submits sufficient information to allow Design Professional/Engineer/Project Manager to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the Design Professional/Engineer/Project Manager shall be the same as those provided herein for substitute materials and equipment.

F. Design Professional/Engineer/Project Manager shall be allowed a reasonable time within which to evaluate each proposed substitute. Design Professional/Engineer/Project Manager shall be the sole judge of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without the Design Professional/Engineer/Project Manager's prior written acceptance which shall be evidenced by either a Change Order or an approved submittal. County may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. Design Professional/Engineer/Project Manager will record time required by Design Professional/Engineer/Project Manager and Design Professional/Engineer/Project Manager's consultants in evaluating substitutions proposed by Contractor and making changes in the Contract Documents occasioned thereby. Whether or not County accepts a proposed substitute, Contractor shall reimburse County for the charges of Design Professional/Engineer and Engineers consultant(s) for evaluating each proposed substitute.

G. Shop Plans/Working Plans

1. One electronic complete set of detailed shop or working Plans shall be furnished by the prime Contractor to the Design Professional/Engineer/Project Manager for review and processing. The submittal shall include all details, computations, materials, loads, stresses, member sizes, deflections and temporary connections for pre-casting or any other relevant information on details necessary for review.

2. All shop, working and erection Plans prepared by the Contractor or its subcontractor, fabricator or supplier shall be REVIEWED, DATED, STAMPED, APPROVED, SEALED (if required), and SIGNED BY THE CONTRACTOR prior to submission for review to the Design Professional/Engineer/Project Manager. By approving and submitting shop or working Plans, the Contractor represents that it has verified Work requirements, field measurements, construction criteria, sequence of assembly and erection, access and

clearances, catalog numbers and other similar data. Each submission shall indicate the Specification section or bid item number and page and/or sheet number to which the submission applies. Under no circumstances will submittals be accepted from subcontractors.

The Contractor shall indicate on the working, shop and erection Plans all deviations from the Contract Documents and shall itemize all deviations in the letter of transmittal.

3. Submittals shall be made to the Design Professional/Engineer/Project Manager and will be distributed to the appropriate parties, as applicable. The Contractor shall identify each submittal by title on the form provided by the Design Professional/Engineer/Project Manager. All submittals are to be transmitted in an expeditious manner to ensure "next day delivery". After they have been reviewed by the Design Professional/Engineer/Project Manager, all submittals shall be stamped either "no exceptions," "exceptions noted" or "rejected" with resubmittal required and returned to the Contractor.
4. Prior to receipt of the reviewed shop or working Plans from the County, Work done, or materials ordered for items covered by the Plans shall be done at the Contractor's risk.
5. All submittals by the Contractor shall be made sufficiently in advance of the scheduled start of the applicable construction operation to allow for shop Plans review and for Contractor action required in addressing review comments. The review period shall begin on the day the submittal is received in the office of the Design Professional/Engineer/Project Manager and shall be completed on the day the Design Professional/Engineer/Project Manager transmits reviewed Plans to the Contractor.
6. The Contractor shall schedule the submission of shop drawing sheets (to be discussed at the pre-construction meeting) so that approximately 21 days are allowed for review by the Engineer and Consultant for routine Work. For more complex Work, the number of copies and the scheduled time for review shall be increased proportionately to the complexity of the Work. Contractor submittals that are to be considered as complex and requiring proportionately greater review time include, but are not limited to, the following:
    a. Contractor submittals of alternative design features or modifications to the original design.
    b. Contractor submittals of complex designs, unusual construction or equipment and methods requiring analysis of design calculations.

H. Materials

1. Delivery Tickets: The Contractor shall submit a copy of all delivery tickets for materials used on the Project, regardless of the basis of payment.
2. Job Mix Formula for Asphaltic Concrete: Attention is directed to the provisions of the "PINELLAS COUNTY, FLORIDA - SPECIFICATIONS FOR HOT BITUMINOUS MIXTURES, PLANT METHODS, EQUIPMENT AND CONSTRUCTION METHODS, latest edition," and technical specification P-401 which require the submission of job mix formulas for asphaltic concrete, of the type specified, at least 14 days before plant operations begin. The submitted formula shall be approved by the Design Professional/Engineer/Project Manager. The Contractor shall prepare the mix formula to be submitted to the Design Professional/Engineer/Project Manager.
3. Job Mix Formula for Portland Cement Concrete: Attention is directed to the requirement that job mix design formulas for all Portland Cement Concrete, of the type specified, be submitted at least 14 days prior to use on the Project. The submitted formulas shall be approved by the County and/or its agents prior to its use. All concrete mix designs shall meet Florida D.O.T. Concrete Class mix guidelines, or the requirements included in the Technical Specifications included in these Contract Documents.
4. All Job mix formulas shall be submitted to the Design Professional/Engineer/Project Manager.
5. Concrete Box Culverts, Pipes, Drainage Structures: The Contractor shall submit written documentation that materials meet the minimum requirements of the technical specifications, including copies of supplier's testing results. No payment for the applicable pay item under the Agreement (i.e., Box Culvert, Pipe, Drainage structure, etc.) shall be made to the Contractor until written documentation of the specified minimum requirements is received by the Design Professional/Engineer/Project Manager.

I. The Contractor will provide 8" X 10" color photographs of the Project in its preconstruction condition and for unusual conditions during construction. The photographs will show all pertinent physical features within the construction limits before construction begins. The Contractor will furnish two copies of all pictures to the County. The Contractor shall provide a hard copy and a digital copy for submittal.

SECTION B – SPECIAL CONDITIONS

The Contractor will provide a preconstruction video of all physical features within the construction limits before construction begins. The Contractor will furnish two copies of the video in DVD format

36. RIGHT TO AUDIT

A. All of the Contractor's records related to the performance of this Agreement shall be open to inspection and subject to reproduction by the Design Professional/Engineer/Project Manager during normal working hours to the extent necessary to permit adequate evaluation and verification of any invoices for payment, or claims, submitted by the Contractor or any of its payees pursuant to the execution of the Agreement. Such records shall include, but not be limited to, accounting records, written policies and procedures, subcontractor files, original estimates, estimating work sheets, correspondence, Change Order files (including the documentation of negotiated settlements), any supporting evidence necessary to substantiate charges related to this Agreement, and any records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement.

B. For the purpose of such audits, inspections, examinations and evaluations the Design Professional/Engineer/Project Manager shall have access to the said records from the effective date of this Agreement, for the duration of the Work, and until 36 months after the date of final payment by the County to the Contractor for performance under this Agreement. The Contractor hereby agrees to maintain said records in safe and dry storage until the end of this time period.

C. The Design Professional/Engineer/Project Manager shall have access to the Contractor's facilities and all necessary records in order to conduct audits in compliance with this Paragraph.

37. INTEREST ON JUDGMENTS

In the event of any disputes between the parties to this Agreement, including without limited thereto, their assignees and/or assigns, arising out of or relating in any way to this Agreement, which results in litigation and a subsequent judgment, award or decree against either party, it is agreed that any entitlement to post judgment interest, to either party and/or their attorneys, shall be fixed by the proper court at the rate of 5% percent, per annum, simple interest. Under no circumstances shall either party be entitled to pre-judgment interest. The parties expressly acknowledge and, to the extent allowed by law, hereby opt out of any provision of federal or state statute not in agreement with this Paragraph.

38. DRAINAGE

The Contractor shall so conduct its operations and maintain the Work in such condition that adequate drainage will be in effect at all times.

39. SURVEY AND LAYOUT

The requirements below (A-H), shall only be applicable when there is a pay item for the contractor to perform the Survey and Layout. If there is no separate pay item for “Survey and Layout by Contractor”, then the County shall perform the Survey and Layout.

A. The Contractor shall be responsible for providing all lines, grades, boundaries and required survey and/or layout necessary to construct and inspect the Project. All right-of-way and easement boundaries and centerline control points shall be established and maintained through the Agreement Period by the Contractor.

B. The Contractor shall employ or retain the services of a Florida registered Professional Land Surveyor to perform and supervise the establishment and setting of the Project centerline control at intervals not to exceed 500 feet. All primary control points such as section corners, points of intersection, points of curvature and points of tangency shall be installed, referenced by acceptable standards, and maintained through the Agreement Period. All stakes and points shall be clearly marked and identified.

C. The Contractor shall employ or retain the services of a Florida registered Professional Land Surveyor to perform and supervise the establishment of all rights-of-way/boundary staking at all Project sidelines. Such staking shall be established and maintained by the Contractor's registered Professional Land Surveyor along each sideline or perimeter at each station and all points of intersection, points of curvature, and points of tangency. All stakes shall be clearly marked and identified.

D. The Contractor's registered Professional Land Surveyor and all employees engaged in survey efforts shall keep proper documentation of survey notes in hard bound books. The use of digital data storage capabilities may be used in lieu of hard bound books. Standard ASCII files/format shall be used with software compatibility to that of

the Design Professional/Engineer/Project Manager's. The Contractor shall submit for approval the selected format and software application(s).

E. The Contractor may perform or select the option to employ a Florida registered Professional Design Professional/Engineer or registered Professional Land Surveyor to provide construction layout. All layout and measurements shall be performed from control and boundaries established and maintained by the Contractor's Florida registered Professional Land Surveyor.

F. The Contractor shall be responsible to perform all layout in acceptable standard methods. All items shall be clearly staked and marked. Roadway items shall be staked for horizontal alignment relative to the edge of pavement with appropriate offset stakes. All vertical grades should be referenced to the nearest even foot cut or fill where practical. Tabulated cut/fill sheets are acceptable for utility Work items, copies of which shall be furnished to the Design Professional/Engineer/Project Manager prior to the Work.

G. All calculations for intermediate grades and locations shall be performed by the Contractor. All calculations shall be transcribed in hard-bound field books prior to layout and staking.

H. The Contractor shall submit, for information only, a Survey and Layout Plan comprised of the following:

1. Name, address and certificate number of the registered Professional Land Surveyor to be in responsible charge of performing all survey control and boundary Work.

2. Name, address and certificate registration number, if applicable, of the person in responsible charge of performing all layout, measurements and calculations for the Project, if opted by the Contractor. This person must be a Contractor, Professional Land Surveyor or Professional Design Professional/Engineer.

40. <u>CONFORMITY OF WORK WITH PLANS</u>

A. All Work performed and all materials furnished shall be in reasonably close conformity with the lines, grades, cross sections, dimensions, and material requirements, including tolerances, shown on the Plans or indicted in the Specifications.

B. In the event the Design Professional/Engineer/Project Manager or Consultant finds the materials or the finished product in which the materials are used not within reasonably close conformity with the Plans and Specifications, but that reasonably acceptable Work has been produced, he/she shall then make a determination if the Work shall be accepted and remain in place. In this event, the Design Professional/Engineer/Project Manager will document the basis of acceptance by Contract modification which will provide for an appropriate adjustment in the Agreement Amount for such Work or materials as he deems necessary to conform to his/her determination based on Design Professional/Engineer/Project Managers judgment.

41. <u>LABORATORY TESTING</u>

Cost of all required laboratory testing for Quality Assurance shall be borne by the ENGINEER, except that the cost of all re-testing due to defective materials or construction shall be borne by the CONTRACTOR. Testing shall be in accordance with the applicable portions of Specifications and Plans. The Contractor shall also be responsible for all related laboratory costs associated with cancellation of scheduled testing due to Work not completed and ready for testing at the scheduled time.

42. <u>GUARANTEE OF WORK</u>

All Work shall be guaranteed for **12 months** after the date on the certificate of completion and final acceptance of the Work unless otherwise specified. The guarantees are to be construed as being supplemental in nature and in addition to any and all other remedies available to the County under the laws of the State of Florida.

43. <u>WARRANTY</u>

The Contractor shall obtain and assign to the County all expressed warranties given to the Contractor or any subcontractors by any material suppliers, equipment or fixtures to be incorporated into the Project. The Contractor warrants to the County that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. The Contractor further warrants to the County that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. Unless otherwise specified, if within **18 months** after the date on the Certificate of Completion and final acceptance, any Work is found to be defective or not in conformance with the

SECTION B – SPECIAL CONDITIONS

Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Design Professional/Engineer/Project Manager. The Contractor shall also be responsible for and pay for replacement or repair of adjacent materials or Work which may be damaged as a result of such replacement or repair. These warranties are in addition to those implied warranties to which the County is entitled as a matter of law.

SECTION C – INSURANCE REQUIREMENTS

1. LIMITATIONS ON LIABILITY

By submitting a Bid, the Vendor acknowledges and agrees that the services will be provided without any limitation on the Vendor's liability. The County objects to and shall not be bound by any term or provision that purports to limit the Vendor's liability to any specified amount in the performance of the services. The Vendor shall state any exceptions to this provision in its response, including specifying the proposed limits of liability in the stated exception to be included in the Services Agreement. The Vendor is deemed to have accepted and agreed to provide the services without any limitation on the Vendor's liability that the Vendor does not take exception to in its response. Notwithstanding any exceptions by the Vendor, the County reserves the right to declare its prohibition on any limitation on the Vendor's liability as non-negotiable, to disqualify any Bid I that includes exceptions to this prohibition on any limitation on the Vendor's liability, and to proceed with another responsive, responsible proposal, as determined by the County in its sole discretion.

2. INDEMNIFICATION

Vendor agrees to indemnify, pay the cost of defense, including attorney's fees, and hold harmless the County, its officers, employees and agents from all damages, suits, actions or claims, including reasonable attorney's fees incurred by the County, of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the Agreement; or on account of any act or omission, neglect or misconduct of Contractor; or by, or on account of, any claim or amounts recovered under the Workers' Compensation Law; or of any other laws, regulations, ordinance, order or decree; or arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; or for any violation of requirements of the Americans with Disabilities Act of 1990, as may be amended, and all rules and regulations issued pursuant thereto (collectively the "ADA") except when such injury, damage, or violation was caused by the sole negligence of the County.

3. INSURANCE:

The Vendor must provide a certificate of insurance and endorsement in accordance with the insurance requirements listed below, prior to recommendation for award.

The Vendor shall obtain and maintain and require any subcontractor to obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth. For projects with a Completed Operations exposure, Vendor shall maintain coverage and provide evidence of insurance for two (2) years beyond final acceptance. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and have an AM Best rating of A- VIII or better.

A. Submittals should include, the Vendor's current Certificate(s) of Insurance. If Vendor does not currently meet insurance requirements, Vendor shall also include verification from their broker or agent that any required insurance not provided at that time of submittal will be in place prior to the award of contract.

   Upon selection of Vendor for award, the selected Vendor shall email certificate that is compliant with the insurance requirements. If the certificate received is compliant, no further action may be necessary. The Certificate(s) of Insurance shall be signed by authorized representatives of the insurance companies shown on the Certificate(s). **The Certificate holder section shall indicate Pinellas County, a Subdivision of the State of Florida, 400 S Fort Harrison Ave, Clearwater, FL 33756. Pinellas County shall be named as an Additional Insured for General Liability. A Waiver of Subrogation for Workers Compensation shall be provided if Workers Compensation coverage is a requirement.**

B. Approval by the County of any Certificate(s) of Insurance does not constitute verification by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate(s) of Insurance is in compliance with the requirements of the Agreement. County reserves the right to require a certified copy of the entire insurance policy, including endorsement(s), at any time during the Bid and/or contract period.

C. If any insurance provided pursuant to the Agreement expires or cancels prior to the completion of the Work, you will be notified by CTrax, the authorized vendor of Pinellas County. Upon notification, renewal Certificate(s) of Insurance and endorsement(s) shall be furnished to Pinellas County Risk Management at

SECTION C – INSURANCE REQUIRMENTS

InsuranceCerts@pinellascounty.org and to CTrax c/o JDi Data at PinellasSupport@ididata.com by the Vendor or their agent prior to the expiration date.

1) Vendor shall also notify County within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, nonrenewal or adverse material change in coverage received by said Vendor from its insurer Notice shall be given by email to Pinellas County Risk Management at InsuranceCerts@pinellascounty.org. Nothing contained herein shall absolve Vendor of this requirement to provide notice.

2) Should the Vendor, at any time, not maintain the insurance coverages required herein, the County may terminate the Agreement,

D. If subcontracting is allowed under this Bid, the Primary Vendor shall obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth; and require any subcontractors to obtain and maintain, at all times during its performance of the Agreement, insurance limits as it may apply to the portion of the Work performed by the subcontractor; but in no event will the insurance limits be less than $500,000 for Workers' Compensation/Employers' Liability, and $1,000,000 for General Liability and Auto Liability if required below.

All subcontracts between the Vendor and its Subcontractors shall be in writing and are subject to the County's prior written approval. Further, all subcontracts shall

1. Require each Subcontractor to be bound to the Vendor to the same extent the Vendor is bound to the County by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the Subcontractor.
2. Provide for the assignment of the subcontracts from the Vendor to the County at the election of Owner upon termination of the Contract.
3. Provide that County will be an additional indemnified party of the subcontract.
4. Provide that the County will be an additional insured on all insurance policies required to be provided by the Subcontractor except workers compensation and professional liability.
5. Provide a waiver of subrogation in favor of the County and other insurance terms and/or conditions
6. Assign all warranties directly to the County; and
7. Identify the County as an intended third-party beneficiary of the subcontract. The Vendor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Section C and identify to the Subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents.

E. Each insurance policy and/or certificate shall include the following terms and/or conditions:

1) The Named Insured on the Certificate of Insurance and insurance policy must match the entity's name that responded to the solicitation and/or is signing the agreement with the County.

2) Companies issuing the insurance policy, or policies, shall have no recourse against County for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Vendor.

3) The term "County" or "Pinellas County" shall include all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and Constitutional offices of County and individual members, employees thereof in their official capacities, and/or while acting on behalf of Pinellas County.

4) All policies shall be written on a primary, non-contributory basis.

The minimum insurance requirements and limits for this Agreement, which shall remain in effect throughout its duration and for two (2) years beyond final acceptance for projects with a Completed Operations exposure, are as follows:

1) **Workers' Compensation Insurance:** Worker's Compensation Insurance is required if required pursuant to Florida law. If, pursuant to Florida law, Worker's Compensation Insurance is required, employer's liability, also known as Worker's Compensation Part B, is also required in the amounts set forth herein

Limits

SECTION C – INSURANCE REQUIRMENTS

Employers' Liability Limits	Florida Statutory
Per Employee	$ 500,000
Per Employee Disease	$ 500,000
Policy Limit Disease	$ 500,000

If Vendor/Contractor is not required by Florida law, to carry Workers Compensation Insurance in order to perform the requirements of this Agreement, County Waiver Form for workers compensation must be executed, submitted, and accepted by Risk Management. Failure to obtain required Worker's Compensation Insurance without submitting and receiving a waiver from Risk Management constitutes a material breach of this Agreement.

2) **Commercial General Liability Insurance:** including, but not limited to, Independent Vendor, Contractual Liability Premises/Operations, Products/Completed Operations, and Personal Injury. No XCU exclusions allowed.

Limits

Combined Single Limit Per Occurrence	$ 1,000,000
Products/Completed Operations Aggregate	$ 2,000,000
Personal Injury and Advertising Injury	$ 1,000,000
General Aggregate	$ 2,000,000

3) **Business Automobile or Trucker's/Garage Liability Insurance** covering owned, hired, and non-owned vehicles. If the Consultant does not own any vehicles, then evidence of Hired and Non-owned coverage is sufficient. Coverage shall be on an "occurrence" basis, such insurance to include coverage for loading and unloading hazards, unless Consultant can show that this coverage exists under the Commercial General Liability policy.

Limit

Combined Single Limit Per Accident	$1,000,000

4) **Excess or Umbrella Liability Insurance** excess of the primary coverage required, in paragraphs (1), (2), and (3) above: No XCU exclusions allowed.

Limits

Each Occurrence	$ 4,000,000
General Aggregate	$ 4,000,000

5) **Professional Liability (Errors and Omissions) Insurance** with at least minimum limits as follows. If "claims made" coverage is provided, "tail coverage" extending three (3) years beyond completion and acceptance of the project with proof of "tail coverage" to be submitted with the invoice for final payment. In lieu of "tail coverage", Proposer may submit annually to the County, for a three (3) year period, a current certificate of insurance providing "claims made" insurance with prior acts coverage in force with a retroactive date no later than commencement date of this contract.

Limits

SECTION C – INSURANCE REQUIRMENTS

Each Occurrence or Claim	$ 2,000,000
General Aggregate	$ 2,000,000

For acceptance of Professional Liability coverage included within another policy required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Professional Liability and other coverage combined.

6) **Pollution Legal/Environmental Legal Liability Insurance** for pollution losses arising from all services performed to comply with this contract. Coverage shall apply to sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in Bodily Injury or Property Damage. If policy is written on a Claims Made form, a retroactive date is required, and coverage must be maintained for 3 years after completion of contract or "tail coverage must be purchased. Coverage should include and be for the at least the minimum limits listed below:

   a. Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed.
   b. Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensation damages.
   c. Cost of Cleanup/Remediation.

Limits

Per Claim or Occurrence	$2,000,000
General Aggregate	$2,000,000

For acceptance of Pollution Legal/Environmental Legal Liability coverage included within another policy coverage required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Pollution Legal/Environmental Legal Liability and other coverage combined

7) **Property Insurance** Vendor will be responsible for all damage to its own property, equipment and/or materials.

ELECTRONIC PAYMENT (EPAYABLES)

FLORIDA TRENCH SAFETY ACT

CERTIFICATION AND DISCLOSURE STATEMENT

The undersigned acknowledges the requirements of the Florida Trench Safety Act (Section 553.60 et. seq. Florida Statutes).

A. The Bidder further acknowledges that the Florida Trench Safety Act, (the Act) establishes the Federal excavation safety standards set forth at 29 C.F.R. Section 1926.650 Subpart P, as the interim state standard until such time as the state of Florida, through its Department of Labor and Employment Security, or any successor agency, adopts, updates, or revises said interim standard. This State of Florida standard may be supplemented by special shoring requirements established by the State of Florida or any of its political subdivisions.

B. The Bidder, as Contractor, shall comply with all applicable excavation/trench safety standards.

C. The contractor shall consider the geotechnical data available from the County, if any, the Contractor's own sources, and all other relevant information in its design of the trench safety system to be employed on the subject Project. The Contractor acknowledges sole responsibilities for the selection of the data on which it relies in designing the safety system, as well as for the system itself.

D. The amounts that the Bidder has set forth for pipe installation includes the following excavation/trench safety measures and the linear feet of trench excavated under each safety measure. These units, costs, and unit values shall be disclosed solely for the purpose of compliance with procedural requirements of the Act. No adjustment to the Agreement Time or price shall be made for any difference in the actual number of linear feet of trench excavation, except as may be otherwise provided in these Contract Documents.

	Trench Safety Measure (Description)	**Units of Measure (LF, SF)**	**Unit (Quantity)**	**Unit Cost**	**Extended Cost**
1.				$	$
2.				$	$
3.				$	$
4.				$	$
5.				$	$

For Information Only, Not for Payment Purposes $_____

ELECTRONIC PAYMENT (EPAYABLES)

ELECTRONIC PAYMENT (EPAYABLES)

The Board of County Commissioners (County) is offering faster payments. The County would prefer to make payment using credit card through the ePayables system. See above.

Would your company accept to participate in the ePayables credit card program?
Yes _____ No _____
For more information about ePayables credit card program please visit Purchasing Department website
www.pinellascounty.org/purchase/

_____

Company Name

_____

Signature

_____

Printed Signature

_____

Phone Number

_____

Email

_____

W9 REQUEST FOR TAXPAYER ID NUMBER AND CERTIFICATION

W-9 REQUEST FOR TAXPAYER ID NUMBER AND CERTIFICATION

***Instructions to form W-9 available upon request**

The contractor must complete and submit to the County Form W-9 available: Through the following link:

www.irs.gov/forms-pubs/about-form-w-9

Section 119.071(5), Florida Statutes Notice:

Your Tax Identification Number (which for individuals is your social security number) is collected on Form W9 for use in filing information returns with the IRS as described more fully below. Collection of the Internal Revenue Code (26 U.S.C § 6109).

Privacy Act Notice:

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HAS. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, and District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under the tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer.

SECTION J – 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

(Name of Firm)

(Corporation, Partnership or Individual Proprietor)

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

_____

_____

_____

herein after designated the CONTRACTOR,

WITNESSETH:

That for and in consideration of the sum not to exceed _____

_____ DOLLARS $

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,** Contract No: **22-0650-E(DG)**, 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 () month(s) 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 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.

SECTION J – 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.

SECTION J – 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 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.

2. THE COUNTY AGREES

A. To pay to the Contractor the Agreement Amount herein above specified, as follows: (if applicable)

If progress satisfactory to the County is being made by the Contractor the Contractor will receive partial payments on this Agreement as the Work progresses, based upon estimates of the amount of Work done less payments previously made. In each case 5% of the Agreement Amount earned shall be until satisfactory completion and final acceptance of the Project, and final compliance by the Contractor with all terms and conditions of the Contract Documents. 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.

B. If the Contractor shall so request, to furnish, without charge, 2 certified copies of any motions or resolutions authorizing the execution of this Agreement, or amendments thereto, or any changes in the Plans, Plans or Specifications pertaining to this 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:

SECTION J – AGREEMENT

CHANGE ORDERS

SECTION J AGREEMENT

ADDENDA (if applicable)

APPENDIX 4 SPECIAL NOTICES (if applicable)

SECTION B SPECIAL CONDITIONS

SECTION E SPECIFICATIONS

1. Pinellas County Standard Technical Specifications for Utilities and Related Construction (Supplemental Specifications). Listed in Section E of this contract.
2. Pinellas County Public Works Standard Technical Specifications for Roadway and General Construction – July 2019 edition (Roadway Std. Tech. Specs.)
3. FDOT Standard Specification for Road and Bridge Construction, Divisions II and III only – July 2022 edition (FDOT Specifications). Division I is not applicable.

PINELLAS COUNTY PROJECT SPECIFIC CONSTRUCTION PLANS FOR THIS CONTRACT

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

Phone: 727-453-3218

Email: hconner@pinellascounty.org

SECTION J – AGREEMENT

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 acting by and through the Board of County Commissioners

Chairman

Date

ATTEST:
Ken Burke,
Clerk of the Circuit Court

By:

Deputy Clerk

Approved as to Form

By:

Office of the County Attorney

Name of Firm

By:

Signature

Print Name

Title

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

SECTION K -BONDS

The exact language in Section K must be used when submitting bonds

BOND NO. _____

KNOW ALL MEN BY THESE PRESENTS:
That _____ , as Principal,
and _____ , as Surety,
Located at:

_____
(Business Address & Phone Number)
Are held and firmly bound unto Pinellas County, Florida, as Obligee in the sum of

_____

_____ DOLLARS $ _____ For the payment whereof we bind ourselves,
our heirs, executors, personal representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into an Agreement with Obligee for Bid Title: **PIE Runway 18-36 Pavement Maintenance,** Contract No: **22-0650-E(DG)** in accordance with Plans and Specifications, which Agreement is incorporated by reference and made a part hereof, and is referred to as the Agreement.

THE CONDITIONS OF THIS BOND is that if Principal:

1. Performs the Agreement at the times and in the manner prescribed in the Agreement; and
2. Pays Obligee any and all losses, damages, costs and attorneys' fees, including appellate proceedings, that Obligee sustains because of any default by Principal under the Agreement, including, but not limited to, all delay damages, whether liquidated or actual, incurred by
   Obligee; and
3. Performs the guarantee of all Work and materials furnished under the Agreement for the time specified in the Agreement; then this bond is void; otherwise it remains in full force.

Any changes in or under the Agreement and compliance or noncompliance with any formalities connected with the Agreement or the changes do not affect Surety's obligations under this bond.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Agreement or other Work to be performed hereunder, or the Specifications referred to therein shall in anyway affect its obligation under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Agreement or to Work or to the Specifications.

This instrument shall be construed in all respects as a statutory bond. It is expressly understood the time provisions and statute of limitation under Section 255.05 Florida Statutes, shall apply to this bond.

SECTION K - BONDS

BOND NO. _____

By execution of this bond, the Surety acknowledges that is has read the Surety qualifications and obligations imposed by the construction Agreement and hereby satisfies those conditions.

IN WITNESS WHEREOF, the above bound parties have executed this instrument this day of _____ ,20_____ , the name of each party being affixed, and these presents duly signe by its undersigned representative, pursuant to authority of its governing body.

PRINCIPAL:

_____

_____
(Authorized Signature)

_____
(Print Name)

_____
(Title)

_____
_____
_____
(Business Address)

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____

_____
by _____
of _____ , a _____

Corporation, on behalf of the Corporation. He/She is personally known to me or has produced Florida

Driver's License as identification and who did (did not) take an oath.

Notary: _____

Print Name: _____

Commission Number: _____

My Commission Expires _____

SECTION K - BONDS

BOND NO. _____
SURETY:

_____
(Authorized Signature)

_____
(Print Name)

_____
(Title)

_____

_____

_____
(Business Address)

_____
(Signature as Attorney in Fact)
(Attach Power of Attorney)

_____
Witness at to Attorney In Fact

_____
(Print Name)

_____
(Print Name)

_____
(Title)

_____

_____

_____
(Business Address)

_____
(Telephone Number)

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this

_____
By
Of _____ , a _____
Corporation, on behalf of the Corporation. The Individual is personally known to me or has produced Florida Driver's License as identification and who did (did not) take an oath.

Notary: _____

Print Name: _____

Commission Number: _____

My Commission Expires _____

SECTION K - BONDS

BOND NO. _____

PAYMENT BOND

BY THIS BOND, We _____
(hereinafter called the ("Principal" and _____
(hereinafter called the ("Surety"), located a _____

_____
A surety insurer chartered and existing under the laws of the stat _____
and authorized to do Business in the State of Florida, are held and firmly bound unto Pinellas County
(hereinafter called the "County") in the sum of _____

_____
_____ DOLLARS $ _____
For payment of which we bond ourselves, our heirs, our personal representatives, our successors and our assignees, jointly and severally.

WHEREAS, Principal and County have reached a mutual agreement (hereinafter referred to as the "Agreement") for

Bid Title: **PIE Runway 18-36 Pavement Maintenance**, Contract No: **22-0650-E(DG)** said Agreement being made a part of this Bond by this reference.

NOW, THEREFORE, THE CONDITION OF THIS BOND IS THAT IF THE PRINCIPAL:

1. Shall promptly make payments to all claimants as defined in section 255.05(I), Florida Statutes, Supplying the Principal with labor, materials or supplies, as used directly or indirectly by the Principal in the prosecution of the Work provided for in the Agreement and;
2. Shall pay the County for all losses, damages, expenses, costs and attorneys' fees, including appellate proceedings, that the County sustains because of a default by the Principal in contravention to the Agreement in regard to payment for such labor, materials, or supplies furnished to the Principal; then this bond is void; otherwise this Bond remains in full force and effect.

BE IT FURTHER KNOWN:

1. Any changes in or under the Agreement and compliance or noncompliance with any formalities Connected with the said Agreement or alterations, which may be made in the terms of said Agreement, or in the Work to be done under it, or the giving by the County of any extension of time for the performance of the said Agreement, or any other forbearance on the part of the County or Principal to the other, shall not in any way release the Principal and the Surety, or either of them, their heirs, personal representatives, successors or assigns from liability hereunder, notice to the Surety of any such changes, alterations, extensions or forbearance being hereby waived.
2. Certain claimants seeking the protection of this Bond must timely comply with the strict Requirements set forth in Section 255.05, Florida Statutes, and as otherwise provided by law.
3. The Provisions of this bond are subject to the limitation of Section 255.05(2).

SECTION K - BONDS

BOND NO._____

By execution of this bond, the Surety acknowledges that it has read the Surety qualifications and obligations imposed by the construction Agreement and hereby satisfies those conditions.

THIS BOND DATE THE _____ DAY OF _____ ,20 _____
(the date of issue by the Surety or by the Surety's agent and the date of such agent's power-or-attorney)

PRINCIPAL:

_____

_____
(Authorized Signature)

_____
(Print Name)

_____
(Title)

_____

_____

_____
(Business Address)

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this

_____
By
Of _____ ,a _____
Corporation, on behalf of the Corporation. He/She is personally known to me or has produced Florida Driver's License as identification and who did (did not) take an oath.

Notary: _____

Print Name: _____

Commission Number: _____

My Commission Expires _____

SECTION K - BONDS

BOND NO. _____
SURETY:

_____
(Authorized Signature)

_____
(Print Name)

_____
(Title)

_____

_____
(Business Address)

_____
(Signature As Attorney In Fact)
(Attach Power of Attorney)

_____
Witness at to Attorney In Fact

_____
(Print Name)

_____
(Print Name)

_____
(Title)

_____

_____
(Business Address)

_____
(Telephone Number)

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this

_____
By
Of _____ ,a _____
Corporation, on behalf of the Corporation. He/She is personally known to me or has produced Florida Driver's License as identification and who did (did not) take an oath.

Notary: _____

Print Name: _____

Commission Number: _____

My Commission Expires _____

SECTION L – AFFIDAVIT OF RELEASE AND GUARANTEE

STATE OF FLORIDA

COUNTY OF _____

Before me, the undersigned authority, personally

appeared _____

who after being duly sworn, deposes and says:

All charges for labor, materials, supplies, lands, licenses and other expenses arising from

Bid Title: **PIE Runway 18-36 Pavement Maintenance**, Contract No. **22-0650-E(DG)** for which a lien or a demand against any payment bond might be filed, have been fully satisfied and paid or will be fully satisfied and paid promptly upon receipt of payment by the Contractor. The Contractor will fully indemnify, defend and save harmless the County from all demands, suits, actions, claims of lien or other charges filed or asserted against the County in connection with matters certified to herein.

On behalf of itself and its subcontractors, suppliers, material men, successors and assigns, the Contractor releases and waives all claims, demands, damages, costs and expenses, against the Board of County Commissioners of Pinellas County, relating in any way to the performance or payment of the above-numbered Agreement, for the period from the date of execution of the Agreement through and including the date of acceptance of Final Payment.

The Contractor is aware of contractual provisions for warranties and guarantees contained in the General Conditions of the above numbered Agreement, and acknowledges that those provisions shall have the same force and effect as if this Affidavit had not been executed, and understands that the County's remedies are not limited by same but are in addition to any other remedies provided by law.

This Affidavit is given in connection with the Contractors application for Final Payment.

FURTHER AFFIANT SAYETH NAUGHT.

_____
(Affiant)

STATE OF FLORIDA
COUNTY OF _____
The foregoing instrument was acknowledged before me this

_____

By _____ who is personally known to me and/or has produced

_____ As identification.

_____
Signature of Person Taking Acknowledgement

_____
Name of Acknowledger Types, Printed or Stamped

APPENDIX 2 – SAMPLE CHANGE ORDER

APPENDIX 1 - PERMITS

Florida Statutes 218.80 require the County to disclose to the Contractor which permits and fees will have to be obtained and payable by the Contractor and the amounts of the permits

NPDES Permit

APPENDIX 2 – SAMPLE CHANGE ORDER

SAMPLE CHANGE ORDER

PINELLAS COUNTY PURCHASING DEPARTMENT

CLEARWATER, FLORIDA

FISCAL NO. _____

CHANGE ORDER NO. _____

ACCOUNT NO. _____

TO _____

FOR _____

IN CONNECTION WITH _____

_____

Total Agreement	$_____
Addition	$_____
New Total	$_____
Deletion	$_____
New Total Agreement	$_____

Execution by the contractor of this Change Order shall be considered a waiver of all claims or request for additional time or compensation for any activities prior to time of execution related to items included in the Change Order. The contractor also acknowledges that payment authorized by this Change Order represents full and complete compensation for labor, materials, incidental expenses, overhead profit, impact cost, and time associated with this Work. Claim procedures are outlined in the Contract documents.

_____
Investigator

_____
Director of Purchasing
Accepted this _____ day of
_____20 _____

APPROVED AS TO FORM:
OFFICE OF COUNTY ATTORNEY

By _____
Attorney

PINELLAS COUNTY
BOARD OF COUNTY COMMISSIONERS

By _____
Chairman

Attest: KEN BURKE, CLERK
By _____
Deputy Clerk

Use Authorized Signatures Only

_____
Company

By _____
Title

_____
Witness

APPENDIX 3 – SAMPLE APPLICATION FOR PAYMENT

APPLICATION AND CERTIFICATE FOR PAYMENT

_____ _____
From (Contractor Name) **Pinellas County Department**

Payment Application Number
Purchase Order Number

Payment Period From: _____ to _____

CHANGE ORDER SUMMARY			
Change Order #	Date Approved	Additions	Deductions
TOTAL			
NET CHANGE			

PAYMENT SUMMARY

Original Agreement Amount $ _____

Retainage _____ %

Total Earned Less Retainage $ _____

Less Previous Payments $ _____

Current Payment Due $ _____

I certify that the payment requested is in accordance with the terms of the agreement dated _____ and that previous payments have been used to pay obligations for materials supplied and work performed in conjunction with this project. In accordance with the contract documents and in consideration of _____ ____ paid. _____ ("Contractor") releases and waives for itself and its subcontractors, materialmen, successors, and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort, against the Board of County Commissioners of Pinellas County, Florida, Ex Officio the governing Board of the Pinellas County ("County") relating in any way to the performance of the agreement between contractors and owner, dated _____ for the period from _____ to _____

_____
Contractor Date

APPLICATION FOR PAYMENT APPROVED BY:

_____
Consultant or Design Professional/Engineer of Record

_____
Pinellas County _____ (Dept) Engineering Project Manager

_____
Pinellas County Public Works

_____
Director of _____ (Dept)

APPENDIX 4 – SPECIAL NOTICES

APPENDIX 5 – OTHER UTILITIES

OTHER UTILITIES

AGENCY	REPORT NO.	PAGE NO. (s)

APPENDIX 6 – REPORTS

REPORTS

TITLE	PAGE NO. (s)