



Board of County Commissioners

Agenda Item

Meeting Date: June 20, 2022

Department: Public Works

Staff: Andrew Hill, Environmental Supervisor

Item: Public Works - Panhandle Grading & Paving, Inc. Contract Addendum

Attachment(s) 2021 Agreement and addendum Panhandle Grading and Paving ITB 21-062-FINAL_PPG signed (1)

ACTION NEEDED

Discussion and approval to amend the Panhandle Grading & Paving, Inc. asphalt services contract to include language pertaining to federal RESTORE Act requirements.

SUMMARY/BACKGROUND

On November 9, 2021, the Board accepted the RESTORE Pot-1 Direct Component grant award in the amount of \$570,00 for the Dirt Road Paving Districts 1,4,5 project. The Santa Rosa County Road and Bridge department will perform all other aspects of the dirt road paving construction with an estimated value of \$670,000. The project scope includes the paving of approximately 4.3 miles of dirt roads that have been identified to contribute to runoff into Escambia Bay, Santa Rosa Sound, and East Bay.

The approved project requires an addendum to the County's existing asphalt services contract to include RESTORE Act Federal Requirements. The contract with Panhandle Grading and Paving was originally executed on November 9th, 2021. The amended contract along with a letter certifying adherence to the County's procurement policies and procedures by sealed bids must be submitted before a Notice to Proceed can be issued by the U.S. Treasury.

RECOMMENDATION

Recommend approval of Addendum No. 1 to the Panhandle Grading & Paving contract.

FISCAL IMPACTS

There are no fiscal impacts from the contract addendum.

NEXT STEPS

Pending minor modifications as recommended by the U.S. Treasury, the contract agreement will be fully executed and submitted for Notice to Proceed consideration.

ADDENDUM NO. 1 TO AGREEMENT

SANTA ROSA COUNTY ("County") and **PANHANDLE GRADING & PAVING, INC.**, a Florida corporation, ("Contractor") having the DUNS number of 096274089 enter into this Amendment No. 1 this 6 day of June, 2022.

A. This ADDENDUM to the AGREEMENT made and entered into November 9, 2021, (attached as Exhibit A) provides the Additional RESTORE Act Direct Component Federal Grant Requirements to move forward with the Dirt Road Paving for Districts 1, 4, and 5 (Grant Award Federal Identification Number RDCGR210100) Project.

1. RESTORE Supplementary Terms and Conditions for Federal Awards attached at Exhibit B;
2. RESTORE Act Standard Terms and Conditions attached as Exhibit C.
3. This Amendment only applies to the roads planned to be paved using the RESTORE Dirt Road Paving Districts 1, 4, and 5 Program attached at Exhibit D;
4. Contractor agrees to furnish the required \$100,000 Performance and Payment bond for planned work allocable toward the project at no additional cost.

IN WITNESS WHEREOF, the parties have signed this agreement as of the day and year first above written.



ATTEST:

Donald C. Spencer
Donald C. Spencer, Clerk

**BOARD OF COUNTY COMMISSIONERS
SANTA ROSA COUNTY, FLORIDA**

By: [Signature]
Robert A. Cole, Chairman, Chairman

CONTRACTOR:

**PANHANDLE GRADING & PAVING, INC.,
A Florida corporation**

By: [Signature]
President

WITNESSES:

Greg Cotton
Printed Name: _____

Printed Name: _____

Exhibit A

Regular Meeting, November 9, 2021
Regular Agenda, Operations & Safety Committee
8) Public Works - Asphalt Services Contracts (Panhandle
Grading & Paving, Inc.)

CONSTRUCTION AGREEMENT BETWEEN
SANTA ROSA COUNTY, FLORIDA
AND PANHANDLE GRADING & PAVING, INC.
(Federal Funding)

THIS AGREEMENT is dated as of the 9th day of November in the year 2021 by and between Santa Rosa County, a political subdivision of the state of Florida (hereinafter called County) and Panhandle Grading & Paving, Inc. (hereinafter-called Contractor).

County and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

Contractor shall complete all Work as specified or indicated in the Contract Documents. County has sole discretion on the assignment of such Work. The Work is generally described as follows:

Asphalt Construction Services ("Services" or "Work")

Article 2. CONTRACT TIMES.

- 2.1 The Work will be substantially completed within the prescribed number of calendar days after the date when the Contract Times specified in each assigned Task Order commences to run, and completed and ready for final payment within 30 calendar days after the date when the Contract Times cease to run.
- 2.2 Liquidated Damages. County and Contractor recognize that time is of the essence of this Agreement and that County will suffer financial loss if the Work is not completed within the times specified in paragraph 2.1 above, plus any written extensions allowed by the County. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by County if the Work is not completed on time. Accordingly, instead of requiring of such proof, County and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay County the amount specified in Paragraph 2.3. for each day that expires after the time specified in paragraph 2.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the time specified in paragraph 2.1 for completion and readiness for final payment or any proper extension thereof granted by County, Contractor shall pay County the amount specified in Paragraph 2.3. for each day that expires after the time specified in paragraph 2.1 for completion and readiness for final payment. The Contractor hereby expressly waives and relinquishes any right which it may have to seek to characterize the liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the County's actual damages at the time of contracting if the Contractor fails to substantially complete the Work in a timely manner.
- 2.3 Liquidated Damages are based upon the original contract amount, as established by Santa Rosa County. Liquidated damages, based upon the task order amount will be \$250 dollars per calendar day for task orders below \$50,000, \$500 dollars per calendar day for task orders \$50,000.01 to \$99,999, and \$1,000 dollars per calendar day for task orders \$100,000 and above.

LIQUIDATED DAMAGES SCHEDULE

Phase	Begin Date	Consecutive Calendar Days to Complete	Liquidated Damages
1	Issuance of Task Order	10	Daily Rate as Referenced on ITB 21-062
Entire Project	Issuance of Task Order	TBD	Daily Rate as Referenced on ITB 21-062

Article 3. TERM AND RENEWAL.

The term of this Agreement shall begin upon approval of the Board of County Commissioners and shall continue for a period of One (1) Year from the date of full execution of this Agreement, subject to the County's ability to terminate in accordance with Article 10 of this Agreement. The terms of Article 20 entitled "Indemnification and Waiver of Liability" shall survive termination of this Agreement.

This agreement may be renewed upon mutual written agreement of the parties for a period of up to two, one year renewals.

Article 4. CONTRACT PRICE.

County shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the Bid Schedule submitted in the Bid Form. The cost of this project is not to exceed an annual amount of \$ 5,200,000.00 as per the attached Contractor bid.

Estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by Engineer.

Article 5. PAYMENT PROCEDURES

Contractor shall submit Application for Payment in accordance with Contract. Applications for Payment will be processed by Engineer as provided in the contract.

5.1 Progress Payments; Retainage. County shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the fifteenth (15th) day of each month during construction as provided in paragraphs 5.1.1 and 5.1.2 below. All such payments will be measured based on the number of units completed. Payments to the Contractor shall in no way imply approval or acceptance of Contractor's work.

5.1.1 Prior to Substantial completion, payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or County may withhold.

95 % of Work completed (with the balance being retainage). Once the Contractor completes at least 50% of the Work based on approved pay applications, the retainage will be reduced from 10% to 5% for the remainder of the project. Therefore, following completion of at least 50% of the Work, the Contractor may be paid 95 % of Work completed (with the balance being retainage).

95 % (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to County). Once the Contractor completes at least 50% of the Work based on approved pay applications, the retainage will be reduced from 10% to 5% for the remainder of the project. Therefore, following completion of at least 50% of the Work, the Contractor may be paid 95 % of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to County).

5.1.2 Upon Substantial Completion, in an amount sufficient to increase total payments to Contractor to 95 % of the Contract Price (with the balance being retainage), less such amounts as Engineer shall determine, or County may withhold..

5.1.3 Retainage requirements may be changed to reflect a proposed change to state regulatory statutes.

5.2 *Final Payment.* Upon final completion and acceptance of the Work, County shall pay the remainder of the Contract Price as recommended by Engineer.

5.2.1 Contractor's acceptance of final payment shall constitute a full waiver of any and all claims by Contractor against the County arising out of this Agreement or otherwise relating to the Project, except those previously made in writing and identified by Contractor as unsettled at the time of the final Application for Payment. Neither the acceptance of the Work nor payment by the County shall be deemed to be a waiver of the County's right to enforce any obligations of the Contractor hereunder or to the recovery of damages for defective Work not discovered by the Engineer or the County at the time of final inspection.

5.3 Payments Withheld

5.3.1 The Engineer or the County may decline to approve any Applications for Payment, or portions thereof, because of subsequently discovered evidence or subsequent inspections. The Engineer or the County may nullify the whole or any part of any inspections. The Engineer or the County may nullify the whole or any part of any approval for payment previously issued and the County may withhold any payments otherwise due Contractor under this Agreement or any other agreement between the County and the Contractor, to such extent as may be necessary in the County's opinion to protect it from loss because of:

5.3.1.1 Defective Work not remedied;

5.3.1.2 Third party claims filed or reasonable evidence indicating probable filing of such claims;

5.3.1.3 Failure of Contractor to make payment properly to subcontractors or for labor, materials or equipment;

5.3.1.4 Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount;

5.3.1.5 Reasonable indication that the Work will not be completed within the Contract Time;

5.3.1.6 Unsatisfactory prosecution of the Work by the Contractor;

- 5.3.1.7 Failure to provide accurate and current "As-Builts"; or
- 5.3.1.8 Any other material breach of the Contract Documents.

5.3.2 If these conditions in Subsection 5.3.1 are not remedied or removed, the County may after three (3) calendar days written notice, rectify the same at Contractor's expense. The County also may offset against any sums due Contractor the amount of any liquidated or unliquidated obligations of Contractor to the County, whether relating to or arising out of his Agreement or any other agreement between Contractor and the County.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce County to enter into this Agreement Contractor makes the following representations:

- 6.1 Contractor has examined and carefully studied the Contract Documents (including the Addenda listed in Article 7 Addendum #1 for ITB 21-062 Asphalt Services) and the other related data identified in the Project Documents including "technical data."
- 6.2 Contractor has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 6.3 Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- 6.4 Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Bid documents. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor acknowledges that County and Engineer do not assume responsibility for the accuracy or completeness of information and data shown, indicated in the Contract Documents with respect to Underground Facilities at, or contiguous to the site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor and safety precautions, and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 6.5 Contractor is aware of the general nature of work to be performed by County and others at the site that relates to the Work as indicated in the Contract Documents.
- 6.6 Contractor has correlated the information known to Contractor, information and observation obtained from visits to the site, reports, and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- 6.7 Contractor has given Engineer written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is

acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS

The Contract Documents that comprise the entire agreement between County and Contractor concerning the Work consist of the following:

- 7.1 This Agreement
- 7.2 Exhibit A- ITB 21-062 and Contractor's Bid
- 7.3 Exhibit B- Civil Rights Clauses
- 7.4 Exhibit C- Scrutinized Contractors Certificate
- 7.5 Exhibit D-Insurance Requirements
- 7.6 Exhibit E-Special Conditions – Additional Federal Requirements
- 7.7 Any other documents necessary to clarify and memorialize the agreement between Contractor and County.

Article 8. PUBLIC RECORDS

Any record created by either party in accordance with this Contract shall be retained and maintained in accordance with the public records law, Florida Statutes, Chapter 119.

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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, WANDA PITTS, AT (850) 963-1925, wandap@santarosa.fl.gov, 6945 Caroline Street, Milton, FL 32570.

Contractor must comply with the public records laws, Florida Statute chapter 119, specifically Contractor must:

- 8.1 Keep and maintain public records required by the County to perform the service.
- 8.2 Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119 Florida Statutes or as otherwise provided by law.
- 8.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the consultant does not transfer the records to the County.
- 8.4 Upon completion of the contract, transfer, at no cost, to the County all public records in possession of

the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining the public records. All records stored electronically must be provided to the County, upon the request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

Article 9. AUDIT

The County and/or its designee shall have the right from time to time at its sole expense to audit the compliance by the Contractor with the terms, conditions, obligations, limitations, restrictions, and requirements of this Contract and such right shall extend for a period of three (3) years after termination of this Contract.

Article 10. TERMINATION FOR CONVENIENCE

County may at any time and for any reason terminate Contractor's services and work at County's convenience. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the Contract and approved by County; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against County for any additional compensation or damages in the event of such termination and payment. Further, County may terminate this contract immediately for failure of contractor to comply with Chapter 119, Florida Statutes.

Article 11. VIOLATIONS OF CHAPTER 119 FLORIDA STATUTES

The County reserves the right to terminate this agreement immediately for failure of Contractor to adhere to the requirements of Florida Statutes Chapter 119.

Article 12. MISCELLANEOUS.

12.1 Terms used in this Agreement which are defined in the Bid documents.

12.2 No assignment by a Party of any rights under or interests in the Contract Documents will be binding on another Party hereto without the written consent of the Party sought to be bound; and, specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

12.3 County and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other Party, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

12.4 Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon County and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision

12.5 All documents prepared by the Contractor pursuant to this Agreement and related Services to this Agreement are intended and represented for the Ownership of the County only. Any other use by Contractor or other parties shall be approved in writing by the County. If requested, Contractor shall deliver the documents to the County within fifteen (15) calendar days.

Article 13. GOVERNING LAW, VENUE AND WAIVER OF JURY TRIAL.

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any dispute or controversy arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder shall be brought exclusively in the 1st Judicial Circuit in and for Santa Rosa County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. In the event it becomes necessary for the County to file a lawsuit to enforce any term or provision under this Agreement, then the County shall be entitled to its costs and attorney's fees at the pretrial, trial and appellate levels. BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the County pursuant to Section 768.28, Florida Statutes.

Article 14. CIVIL RIGHTS.

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

Article 15. COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS.

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest, agrees as follows:

- a. Compliance with Regulations: The Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated and attached hereto as Attachment "B".

- b. Nondiscrimination: The Contractor, with regard to the Work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- c. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- d. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or other governmental entity to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the County or the other governmental entity, as appropriate, and will set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the non-discrimination provisions of this contract, the County will impose such contract sanctions as it or another applicable State or Federal governmental entity may determine to be appropriate, including, but not limited to:
- a. Withholding payments to the Contractor under the Agreement until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending the Agreement, in whole or in part.
- f. Incorporation of Provisions: The Contractor will include the provisions of Article 7, Subsections A-E in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the County may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the County to enter into any litigation to protect the interests of the County. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Article 16. COMPLIANCE WITH LAWS.

Contractor shall secure any and all permits, licenses and approvals that may be required in order to perform the Services, shall exercise full and complete authority over Contractor's personnel, shall comply with all workers' compensation, employer's liability and all other federal, state, county, and municipal laws, ordinances, rules and regulations required of an employer performing services such as the Services, and shall make all reports and remit all withholdings or other deductions from the compensation paid to

Contractor's personnel as may be required by any federal, state, county, or municipal law, ordinance, rule, or regulation.

Article 17. CONFLICT OF INTEREST.

The Contractor covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of the Services. The Contractor further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by the Contractor. The Contractor guarantees that he/she has not offered or given to any member of, delegate to the Congress of the United States, any or part of this contract or to any benefit arising therefrom.

Article 18. INDEPENDENT CONTRACTOR.

Contractor enters into this Agreement as, and shall continue to be, an independent contractor. All Services shall be performed only by Contractor and Contractor's employees and subcontractors. Under no circumstances shall Contractor or any of Contractor's employees or subcontractors look to the County as his/her employer, or as partner, agent or principal. Neither Contractor, nor any of Contractor's employees and subcontractors, shall be entitled to any benefits accorded to the County's employees, including without limitation worker's compensation, disability insurance, vacation or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in Contractor's name, unemployment, disability, worker's compensation and other insurance as well as licenses and permits usual and necessary for conducting the services to be provided under this Agreement.

Article 19. THIRD PARTY BENEFICIARIES.

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

Article 20. INDEMNIFICATION AND WAIVER OF LIABILITY.

The Contractor agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the County, its agents, representatives, officers, directors, officials and employees from and against claims, damages, losses and expenses (including but not limited to attorney's fees, court costs and costs of appellate proceedings) relating to, arising out of or resulting from the Contractor's negligent acts, errors, mistakes or omissions relating to the Work performed under this Agreement. The Contractor's duty to defend, hold harmless and indemnify the County its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury; sickness; disease; death; or injury to impairment, or destruction of tangible property including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes or omissions related to Services in the performance of this Agreement including any person for whose acts, errors, mistakes or omissions the Contractor may be legally liable. The parties agree that TEN DOLLARS (\$10.00) represents specific consideration to the Contractor for the indemnification set forth herein.

The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of the County to enforce any of the provisions hereof shall not be construed to be a waiver of the right of the County thereafter to enforce such provisions.

Article 21. TAXES AND ASSESSMENTS.

Contractor agrees to pay all sales, use, or other taxes, assessments and other similar charges when due now or in the future, required by any local, state or federal law, including but not limited to such taxes and assessments as may from time to time be imposed by the County in accordance with this Agreement. Contractor further agrees that it shall protect, reimburse and indemnify County from and assume all liability for its tax and assessment obligations under the terms of the Agreement.

The County is exempt from payment of Florida state sales and use taxes. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is the Contractor authorized to use the County's tax exemption number in securing such materials.

The Contractor shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

Article 22. PROHIBITION AGAINST CONTRACTING WITH SCRUTINIZED COMPANIES.

Pursuant to Florida Statutes Section 215.4725, contracting with any entity that is listed on the Scrutinized Companies that Boycott Israel List or that is engaged in the boycott of Israel is prohibited. Contractors must certify that the company is not participating in a boycott of Israel. Any contract for goods or services of One Million Dollars (\$1,000,000) or more shall be terminated at the County's option if it is discovered that the entity submitted false documents of certification, is listed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria after July 1, 2018.

Any contract entered into or renewed after July 1, 2018 shall be terminated at the County's option if the company is listed on the Scrutinized Companies that Boycott Israel List or engaged in the boycott of Israel. Contractors must submit the certification that is attached to this agreement as Attachment "C". Submitting a false certification shall be deemed a material breach of contract. The County shall provide notice, in writing, to the Contractor of the County's determination concerning the false certification. The Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination was in error. If the Contractor does not demonstrate that the County's determination of false certification was made in error, then the County shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute Section 215.4725.

Article 23. INCONSISTENCIES AND ENTIRE AGREEMENT.

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any attachment attached, any document or events referred to herein, or any document incorporated into this Agreement, the term, statement, requirement, or provision contained in this Agreement shall prevail and be given superior effect and priority over any conflicting or inconsistent term, statement, requirement or provision contained in any other document or attachment, including but not limited to Attachments listed in Section 7.

Article 24. SEVERABILITY.

If any term or condition of this Contract shall be deemed, by a court having appropriate jurisdiction, invalid or unenforceable, the remainder of the terms and conditions of this Contract shall remain in full force and effect. This Contract shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all the terms and provisions hereof.

Article 25. ENTIRE AGREEMENT.

This Agreement and Exhibits A through E contains the entire agreement of the Parties, and may be amended, waived, changed, modified, extended or rescinded only by in writing signed by the Party against whom any such amendment, waiver, change, modification, extension and/or rescission is sought.

Article 26. REPRESENTATION OF AUTHORITY TO CONTRACTOR/SIGNATORY.

The individual signing this Agreement on behalf of Contractor represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. The signatory represents and warrants to the County that the execution and delivery of this Agreement and the performance of the Services and obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the Contractor and enforceable in accordance with its terms.

Article 27. PROCUREMENT OF RECOVERED MATERIALS

Contractor and any subcontractors agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
- 2) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

Article 28. DEBARMENT AND SUSPENSION

1. Contractor as part of the procurement response, Attachment "A", has submitted to the County a certification that Contractor and its principals, if applicable, are not presently debarred or suspended by any Federal department or agency from participating in this transaction. Contractor now agrees to verify, to the extent applicable, that for each lower tier subcontractor that exceeds \$25,000 as a "covered transaction" under the Services to be provided is not presently disbarred or otherwise disqualified from participating in the federally assisted services. The Contractor agrees to accomplish this verification by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offerer/Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

Article 29. MINORITY/WOMEN'S BUSINESS ENTERPRISES

Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, in accordance with 2 CFR 200.321. If subcontracts are to be let, prime contractor will require compliance by all sub-contractors. Information regarding certified M/WBE firms can be obtained from (the following list is not exhaustive):

- Florida Department of Management Services (Office of Supplier Diversity);
- Florida Department of Transportation;
- Minority Business Development Center in most large cities; and
- Local Government M/DBE programs in many large counties and cities.

Article 30. SPECIAL CONDITIONS – ADDITIONAL FEDERAL REQUIREMENTS.

As some or all of the Services to be provided under this Agreement may be funded with federal funds, Contractor agrees to adhere to the required additional federal requirements set forth in Attachment "E" and incorporated by reference.

Article 31. GRANT OR AGREEMENT REQUIREMENTS

Through the course of this Agreement, the County may be awarded State or Federal grants that may fund some or all of the Services to be provided under this agreement. Contractor will be provided a copy of the executed grant agreement and agrees to comply with all the requirements of the grant agreement.

Article 32. ACCESS TO RECORDS. THE FOLLOWING ACCESS TO RECORDS REQUIREMENTS APPLY TO THIS CONTRACT:

1. The Contractor agrees to provide the FEMA Administrator, the Comptroller General of the United States, or any of their authorized access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
4. In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

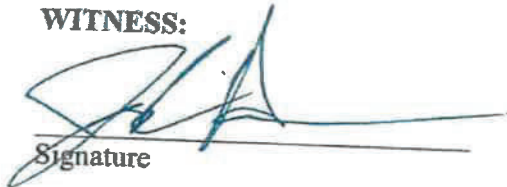
The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

IN WITNESS WHEREOF, County, and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to County, Contractor, and Engineer. All portions of the Contract Documents have been signed, initialed or identified by County, and Contractor, or identified by Engineer on their behalf.

This Agreement will be effective on November 9th, 2021 (which is the Effective Date of the Agreement).

WITNESS:

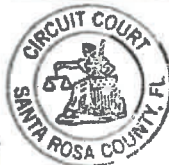

Signature

Josh Hamner
Print Name

BY:


Donald Long, Vice President

ATTEST:



SANTA ROSA COUNTY, FLORIDA


Donald C. Spencer, Clerk of Court

BY:


David C. Piech, Chairman