

## STANDARD FIXED PRICE AGREEMENT BETWEEN COUNTY AND CONTRACTOR

This Standard Fixed Price Contract Between County and Contractor (this "Agreement"), made by and between Marion County, a political subdivision of the State of Florida, located at 601 SE 25<sup>th</sup> Ave, Ocala, FL 34471 (hereinafter referred to as the "COUNTY") and **Superior Asphalt, Inc.**, located at 4801 15th Street East, Bradenton, FL 34203, possessing FEIN# 65-1115948, (hereinafter referred to as the "CONTRACTOR") under seal for **CR 320 Resurface (County Line to NW 221st St Rd)** (hereinafter referred to as the "Project"). COUNTY and CONTRACTOR (singularly referred to as "Party", collectively "Parties") hereto agree as follows:

### SECTION 1 THIS AGREEMENT AND THE CONTRACT DOCUMENTS

#### A. EFFECTIVE DATE

The agreement between COUNTY and CONTRACTOR, of which this Agreement is a part, consists of the Contract Documents defined herein. This Agreement shall be effective on the last signature date set forth below.

#### B. THE CONTRACT DOCUMENTS

1. The Contract Documents are defined as this Agreement with all its special terms and conditions, if any, the Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the Parties hereafter, together with the following (if any):

**Marion County Bid # 24B-082 - CR 320 Resurface (County Line to NW 221st St Rd), the Offer, Project Bid Scope and/or Specifications, Plans and drawings, Any/all Addenda as issued in support of this Bid, Recorded Bonds as required, Certificate of Insurance and Notice to Proceed**

2. CONTRACTOR acknowledges receipt of a copy of each and every Contract Document.
3. The Contract Documents, and each item therein, shall remain the property of COUNTY. CONTRACTOR shall have the right to keep one record set of the Contract Documents upon completion of the Project.
4. Should any conflict arise between the contract documents and this Agreement, the terms of this Agreement shall govern.

#### C. ENTIRE AGREEMENT

The Contract Documents form the entire integrated agreement between the Parties for the Project that supersedes prior negotiations, representations or agreements either written or oral. This Agreement may be amended or modified only by a writing.

#### D. THE PRICE

COUNTY shall pay, and CONTRACTOR shall accept, as full and complete payment for all of the Work required and defined herein, the sum of **One Million, Seven Hundred and Sixty Seven Thousand, Eight Hundred and Twenty Nine with Twenty Cents (\$1,767,829.20) based on unit pricing set forth in the Schedule of Values, Exhibit A, hereto**, (the "Price"). The Price shall not be modified except by Change Order as provided in this Agreement.

#### E. NO PRIVITY WITH OTHERS

Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between COUNTY and any other person or entity other than CONTRACTOR.

**F. INTENT AND INTERPRETATION**

1. The intent of this Agreement is to require complete, correct and timely execution of the Work. Any Work that may be required implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by CONTRACTOR for the Price.
2. This Agreement is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by this Agreement.
3. When a word, term or phrase is used in this Agreement, it shall be interpreted or construed, first as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
4. The words "include," "includes," or "including," as used in this Agreement, shall be deemed to be followed by the phrase, "without limitation."
5. The specification herein of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Agreement shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Agreement.
6. Words or terms used as nouns in this Agreement shall be inclusive of their singular and plural forms, unless the context or their usage clearly requires a contrary meaning.
7. CONTRACTOR shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings and the Product Data and shall give written notice to COUNTY of any inconsistency, ambiguity, error or omission which CONTRACTOR may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by COUNTY, or the Architect and/or Engineer, of the Contract Documents, Shop Drawings or Product Data, shall not relieve CONTRACTOR of the continuing duties imposed hereby, nor shall any such approval be evidence of CONTRACTOR's compliance with this Agreement.
8. COUNTY has requested the Architect and/or Engineer to prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER COUNTY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO CONTRACTOR CONCERNING SUCH DOCUMENTS. By the execution hereof, CONTRACTOR acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that CONTRACTOR has not, does not, and will not rely upon any representation or warranties by COUNTY concerning such documents as no such representation or warranties have been or are hereby made.
9. As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern; as between larger scale and smaller scale drawings, the larger scale shall govern.
10. Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control CONTRACTOR in dividing the Work or in establishing the extent or scope of the Work to be performed by subcontractors defined herein.

**G. OWNER OF CONTRACT DOCUMENTS**

The Contract Documents, and each of them, shall remain the property of COUNTY. CONTRACTOR shall have the right to keep one record set of the Contract Documents upon completion of the Project.

**SECTION 2  
THE WORK**

**A. Definition of "Work."**

The term "Work" shall mean whatever is done by or required of CONTRACTOR to perform and complete its duties under the Contract Documents, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures,

appliances, facilities, tools, transportation, storage, power, permits and licenses required of CONTRACTOR, fuel, heat, light, cooling and all other utilities as required by this Agreement.

- B. The Work to be performed by CONTRACTOR is generally described in 24B-082CR 320 Resurface (County Line to NW 221st St Rd), ACCORDING TO THE PLANS AND SPECIFICATIONS FURNISHED BY COUNTY.

### **SECTION 3 TIME**

**A. Time is of The Essence.**

All limitations of time set forth in the Contract Documents are of the essence for all performance obligations in this Agreement.

### **SECTION 4 SUBSTANTIAL COMPLETION**

**A. Definition of "Substantial Completion."**

"Substantial Completion" shall mean the stage in the progression of the Work when Work is sufficiently complete, in accordance with this Agreement, that COUNTY can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose.

**B. Punch List.**

When CONTRACTOR believes that the Work is substantially complete, CONTRACTOR shall submit to the Architect and/or Engineer a list of items to be completed or corrected ("Punch List Items").

**C. Certificate of Substantial Completion.**

When the Architect and/or Engineer on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of COUNTY and CONTRACTOR for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which CONTRACTOR shall complete the items listed therein.

### **SECTION 5 FINAL COMPLETION**

**A. Definition of "Final Completion."**

Final Completion is defined as having all Work completed, all Punch List Items corrected, final inspection completed and accepted by COUNTY. CONTRACTOR shall achieve Final Completion no later than **120** calendar days from the start date noted on the Notice to Proceed.

**B. Certificate for Payment.**

When all of the Work is finally complete and CONTRACTOR is ready for a final inspection, CONTRACTOR shall notify COUNTY and the Architect and/or Engineer thereof in writing. Thereupon, the Architect and/or Engineer will make final inspection of the Work and, if the Work is acceptable under the Contract Documents and this Agreement has been fully performed, the Architect and/or Engineer will promptly issue a final Certificate for Payment certifying to COUNTY that the Project is complete and CONTRACTOR is entitled to the remainder of the unpaid Price (including retainage, if any), less any amount withheld pursuant to this Agreement. If the Architect and/or Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, CONTRACTOR shall bear the cost of such repeat final inspection(s) which cost may be deducted by COUNTY from CONTRACTOR's final payment.

**C. Time and Liquidated Damages.**

1. CONTRACTOR or CONTRACTOR's surety, if any, shall pay COUNTY liquidated damages; the sum of **\$1,699** per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and

payable hereunder by CONTRACTOR shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by COUNTY.

2. When COUNTY reasonably believes that Final Completion will be inexcusably delayed, COUNTY shall be entitled, but not required, to withhold from any amounts otherwise due CONTRACTOR, an amount then believed by COUNTY to be adequate to recover liquidated damages applicable to such delays, if any. When CONTRACTOR overcomes the delay in achieving Final Completion, or any part thereof, for which COUNTY has withheld payment, COUNTY shall promptly release to CONTRACTOR those funds withheld, but no longer applicable, as liquidated damages.

**D. Final Payment.**

CONTRACTOR shall not be entitled to final payment until this Agreement is closed out requiring completion by CONTRACTOR and acceptance by COUNTY of the Work and all corrected Punch List Items; Final Inspection completed; and COUNTY's receipt of the following: CONTRACTOR's final Application for Payment requesting release of retainage (if any); CONTRACTOR's affidavit affirming that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which COUNTY, or COUNTY's property might be responsible, have been fully paid or otherwise satisfied; Waivers of Right to Claim Against the Payment Bond (Final Payment) from all subcontractors, as defined in Section 713.01, F.S., who performed Work on the Project; As-Built Survey; and, as applicable, all OEM Manuals; spare parts; all video of area worked on; all FDEP Clearance for Water and/or Sewer; all testing documents/reports received for any and all ROW Inspections completed and accepted; and, all testing of machinery warranty letters/affidavits.

## **SECTION 6 INSURANCE**

**A. No Waiver.**

Neither approval by COUNTY, nor failure to disapprove by COUNTY, the insurance furnished by CONTRACTOR, shall relieve CONTRACTOR of its full responsibility for the performance of any obligation, including CONTRACTOR's indemnification of COUNTY under this Agreement.

**B. Insurance.**

Until Project completion and all Work accepted by COUNTY, insurance policies shall be with a company or companies authorized to do business in the State of Florida. COUNTY shall be notified if any policy limit has eroded to one half its annual aggregate. CONTRACTOR shall provide, within the timeframe noted in the Award Letter, a Certificate of Insurance, issued by a company authorized to do business in the State of Florida and with an A.M. Best Company rating of at least A-. Self-Insured companies that cannot be rated, will also be considered. All policies must include all requirements listed below, reference the project number and show Marion County as additional insured. The Certificate should also provide for 30-day cancellation notice to the Procurement Director's address, set forth herein.

**1. WORKERS COMPENSATION AND EMPLOYER'S LIABILITY**

Coverage to apply for all employees at STATUTORY Limits in compliance with applicable State and Federal laws.

- Employer's Liability limits for not less than \$100,000 each accident \$500,000 disease policy limit and \$100,000 disease each employee must be included.
- CONTRACTOR, and its insurance carrier, waives all subrogation rights against Marion County, a political subdivision of the State of Florida, its officials, employees and volunteers for all losses or damages which occur during the contract and for any events occurring during the contract period, whether the suit is brought during the contract period or not.
- COUNTY requires all policies to be endorsed with WC00 03 13 Waiver of our Right to Recover from others or equivalent.

**2. COMMERCIAL GENERAL LIABILITY**

Coverage must be afforded under a Commercial General Liability policy with limits not less than

- \$1,000,000 each occurrence for Bodily Injury, Property Damage and Personal and Advertising Injury
- \$2,000,000 each occurrence for Products and Completed Operations

**3. BUSINESS AUTOMOBILE LIABILITY**

Coverage must be afforded including coverage for all Owned vehicles, Hired and Non-Owned vehicles for Bodily Injury and Property Damage of not less than \$500,000 combined single limit each accident.

- In the event CONTRACTOR does not own vehicles, CONTRACTOR shall maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

**SECTION 7  
RETAINAGE**

- A. Retainage amounts for construction services shall be in accordance with Section 218.735, F.S.
- B. For contracts in excess of Two Hundred Thousand Dollars (\$200,000), COUNTY may retain from each progress payment made to CONTRACTOR an amount not exceeding five (5%) percent of the payment as retainage.
- C. This retainage does not apply to construction services paid for, in whole or in part, with Federal funds and are subject to Federal grantor laws and regulations or requirements that are contrary to any provision of the Local Government Prompt Payment Act, Sections 218.70-218.80, F.S.
- D. Retainage shall be retained until final payment is issued to CONTRACTOR by COUNTY.

**SECTION 8  
PAYMENT OF THE AGREEMENT PRICE**

**A. PAYMENT PROCEDURE**

COUNTY shall pay the Agreement Price by making progress payments to CONTRACTOR as provided below.

**1. Application for Payment.**

**a. When; Frequency.**

After commencement of the Work, and in no event more than once per calendar month, CONTRACTOR shall submit an Application for Payment.

**b. Requirements.** Each Application for Payment must be:

- 1) For the current work period ending the last working day of the month;
- 2) Received by the Architect and/or Engineer no later than the first calendar day of the following month; and
- 3) In such form and manner, and with such supporting data and content, as COUNTY or the Architect and/or Engineer may require.
- 4) Executed on behalf of CONTRACTOR by its Superintendent designated in Section "16(O)(2)" below.

**c. Include; Exclude.** The Application for Payment may request payment for:

- 1) That portion of the Agreement Price properly allocable to Agreement requirements including duly provided, labor, materials and equipment correctly incorporated in the Work;
- 2) Plus, that portion of the Agreement Price properly allocable to materials or equipment properly stored on-site (or elsewhere if approved in advance in writing by COUNTY) for subsequent incorporation in the Work; and
- 3) Less, the total amount of previous payments received from COUNTY.

**2. Warranties.**

**a. As to Title.** CONTRACTOR warrants that:

- 1) Title to all Work covered by an Application for Payment will pass to COUNTY no later than the time of payment; and
- 2) All Work for which payments have been received from COUNTY shall be free and clear of liens, claims, security interest or other encumbrances in favor of CONTRACTOR or any other person or entity whatsoever.

**b. As to the Work.** In its Application for Payment, CONTRACTOR warrants that:

- 1) The Work has progressed to the level for which payment is requested in accordance with the Schedule of Values (**Exhibit A**);
- 2) The Work has been properly installed or performed in full accordance with this Agreement; and
- 3) CONTRACTOR knows of no reason why payment should not be made as requested.

**3. Review.**

Thereafter, the Architect and/or Engineer will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Agreement.

- 4. Certificate for Payment.** When all of the Work is finally complete and CONTRACTOR is ready for a final inspection, CONTRACTOR, through its Superintendent designated in Section "16(O)(2)" below, shall notify COUNTY and the Architect and/or Engineer thereof in writing. Thereupon, the Architect and/or Engineer will make final inspection of the Work and, if the Work is acceptable under the Contract Documents and this Agreement has been fully performed, the Architect and/or Engineer will promptly issue a final Certificate for Payment certifying to COUNTY that the Project is complete and CONTRACTOR is entitled to the remainder of the unpaid Agreement Price (including retainage, if any), less any amount withheld pursuant to this Agreement. If the Architect and/or Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, CONTRACTOR shall bear the cost of such repeat final inspection(s) which cost may be deducted by COUNTY from CONTRACTOR's final payment.

**B. Payment; Payment Amount.**

1. Following the Architect's and/or Engineers receipt of each Application for Payment, COUNTY shall make progress payments on account of the Agreement Price to CONTRACTOR in accordance with The Local Government Prompt Payment Act (the "Prompt Payment Act"), Sections 218.70-218.80, Florida Statutes (hereinafter "F.S."). Should CONTRACTOR'S construction services be paid for, in whole or in part, with Federal funds, COUNTY'S progress payments shall be subject to Federal grantor laws and regulations or requirements, if contrary to the Prompt Payment Act.
2. Payment for stored materials and equipment shall be conditioned upon CONTRACTOR's proof satisfactory to COUNTY, that COUNTY has title to such materials and equipment and shall include proof of required insurance.
3. The amount of each progress payment shall be the amount certified for payment by the Architect and/or Engineer less such amounts, if any, otherwise owing by CONTRACTOR to COUNTY or which COUNTY shall have the right to withhold as authorized by this Agreement.

**C. No Waiver.**

1. The Architect's and/or Engineer's certification of CONTRACTOR's Application for Payment is not a waiver and shall not preclude COUNTY from the exercise of any of its rights as set forth herein.

2. No progress payment, nor any use or occupancy of the Project by COUNTY, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Agreement.
3. Neither COUNTY's review, approval, acceptance or, nor payment for any of the services required shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement; and CONTRACTOR shall be and shall remain liable to COUNTY in accordance with applicable law for all damages to COUNTY caused by CONTRACTOR's performance of any of the services furnished under this Agreement.

**D. Payment of Subcontractors.**

CONTRACTOR shall promptly pay each subcontractor on account of such subcontractor's work, the amount to which such subcontractor is entitled. In the event COUNTY becomes informed that CONTRACTOR has not paid a subcontractor as herein provided, COUNTY shall have the right, but not the duty, to issue future checks in payment to CONTRACTOR of amounts otherwise due hereunder naming CONTRACTOR and such subcontractor as joint payees. Such joint check procedure, if employed by COUNTY, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit COUNTY to repeat the procedure in the future.

**E. Withheld Payment.**

COUNTY may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to CONTRACTOR, to protect COUNTY from loss because of:

1. Defective Work not remedied by CONTRACTOR nor, in the opinion of COUNTY, likely to be remedied by CONTRACTOR;
2. Claims of third parties against COUNTY or COUNTY's property or reasonable evidence indicating probable filing of such claims;
3. Failure by CONTRACTOR to pay subcontractors or others in a timely and proper fashion;
4. Evidence that the Work cannot be completed in accordance with the Contract Documents for the unpaid balance of the Agreement Price;
5. Evidence that the Work will not be completed in the time required for Substantial Completion or Final Completion;
6. Persistent failure to carry out the Work in accordance with the Contract Documents; or
7. Damage to COUNTY or a third party to whom COUNTY is, or may be, liable.

**F. Demand For Amounts Previously Paid.**

In the event that COUNTY makes written demand upon CONTRACTOR for amounts previously paid by COUNTY as contemplated in this Subsection, CONTRACTOR shall promptly comply with such demand.

**G. Unexcused Failure To Pay.**

If within ten (10) days after the date established herein for COUNTY's payment to CONTRACTOR, without cause or basis hereunder, fails to pay CONTRACTOR any amount then due and payable to CONTRACTOR, then CONTRACTOR may, after seven (7) additional days written notice to COUNTY and the Architect and/or Engineer, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from COUNTY have been received. Any payment not made within ten (10) days after the date due shall bear interest at the rate of one and a half percent (1.5%) per annum.

## **SECTION 9 COUNTY**

### **A. Information, Services and Items Required From County.**

COUNTY shall furnish to CONTRACTOR, at the time of executing this Agreement, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to CONTRACTOR only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, COUNTY does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. COUNTY shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

### **B. Excluding permits and fees normally the responsibility of CONTRACTOR, COUNTY shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.**

### **C. Right to Stop Work.**

If CONTRACTOR persistently fails or refuses to perform the Work in accordance with this Agreement, COUNTY may order CONTRACTOR to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or COUNTY orders that Work be resumed. In such event, CONTRACTOR shall immediately obey such order. Failure or refusal to perform the Work in accordance with this Agreement of failure to obey an order of COUNTY shall be deemed a material breach for which COUNTY may immediately terminate this Agreement.

### **D. Right to Perform Work.**

If CONTRACTOR's Work is stopped by COUNTY, and CONTRACTOR fails within seven (7) days of such stoppage to provide adequate written assurance to COUNTY that the cause of such stoppage will be eliminated or corrected, COUNTY may thereafter, without prejudice to any other rights or remedies COUNTY may have against CONTRACTOR, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Price the cost of correcting the subject deficiencies, plus compensation for the Architect's and/or Engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Price is insufficient to cover the amount due COUNTY, CONTRACTOR shall promptly pay the difference to COUNTY.

## **SECTION 10 CONTRACTOR**

### **A. CONTRACTOR shall be responsible for the professional quality of services furnished by CONTRACTOR under this Agreement. CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in its services.**

### **B. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of copartners between the Parties or as constituting CONTRACTOR, including its officers, employees, and agents, as an agent, representative, or employee of COUNTY for any purpose or in any manner whatsoever. CONTRACTOR is to be and shall remain an Independent Contractor with respect to all services performed under this Agreement.**

### **C. CONTRACTOR affirms its continuing duty to perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If CONTRACTOR performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect and/or Engineer, CONTRACTOR shall bear the responsibility for such performance and shall bear the cost of correction.**

### **D. CONTRACTOR shall perform the Work strictly in accordance with this Agreement.**



- E.** CONTRACTOR shall supervise and direct the Work using CONTRACTOR's best skill, effort and attention. CONTRACTOR shall be responsible to COUNTY for any and all acts or omissions of CONTRACTOR, its employees and others engaged in the Work on behalf of CONTRACTOR.
- F. Warranty.**  
CONTRACTOR warrants to COUNTY that all labor furnished to progress the Work under this Agreement will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Agreement, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Agreement. All Work not conforming to these requirements may be considered defective. When not specifically identified in the bid documents, the warranty shall commence upon the date of COUNTY's issuance of final payment to CONTRACTOR and shall be for a period of one (1) year.
- G. Permits and Fees.**  
CONTRACTOR shall obtain and pay for all permits, fees and licenses necessary and/ordinary for the Work. CONTRACTOR shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.
- H. Funding Source/ Labor.**  
1. If construction under this Agreement is funded by State funds, CONTRACTOR shall:  
    a. Give preference to the employment of State residents for the performance of the Work on the Project if State residents have substantially equal qualifications to those of nonresidents, and  
    b. Post its employment needs in the job bank of the Florida Department of Economic Opportunity.  
2. If the Work involves the expenditure of Federal aid funds, this Section shall not be enforced in such a manner as to conflict with or be contrary to Federal law:  
    a. Prescribing a labor preference to honorably discharged soldiers, sailors, or marines, or  
    b. Prohibiting as unlawful any other preference or discrimination among U.S. citizens.
- I. Indemnity.**  
1. To the fullest extent permitted by law, CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its elected officials, officers, employees, and agents, from and against any fines, suits, claims, demands, penalties, liabilities, losses, settlements, judgments, awards, and expenses, including reasonable attorney's fees and costs (and reasonable attorney's fees and costs on appeal), and damages (including but not limited to actual and consequential damages), which COUNTY, its elected officials, officers, employees, and agents may sustain, or which may be asserted against them, arising out of or allegedly arising out of or related to the activities contemplated by this Agreement, including, without limitation, harm or personal injury to third persons, to the extent attributable to the actions of CONTRACTOR, its agents and/or employees as well as any negligent, willful, or wrongful misconduct, knowing misrepresentation or breach of this Agreement by CONTRACTOR, its agents, and/or employees.  
2. In claims against any person or entity indemnified under this Section by an employee of CONTRACTOR, a subcontractor, any one directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount of type or damages, compensation or benefits payable by or for CONTRACTOR or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. This section shall survive the termination of this Agreement.

## **SECTION 11 CONTRACT ADMINISTRATION**

- A. The Architect and/or Engineer.**  
**Doug Hinton** is COUNTY's referenced "Architect and/or Engineer." In the event COUNTY should find it necessary or convenient to replace the Architect and/or Engineer, COUNTY shall retain a replacement and the status of the replacement shall be that of the former Architect and/or Engineer.

**B. Architect and/or Engineer Administration.**

1. The Architect and/or Engineer, unless otherwise directed by COUNTY in writing, will perform those duties and discharge those responsibilities allocated to the Architect and/or Engineer as set forth in Contract Documents. The Architect and/or Engineer shall be COUNTY's representative from the effective date of this Agreement until the date Architect and/or Engineer issues a final Certificate for Payment. The Architect and/or Engineer shall be authorized to act on behalf of COUNTY only to the extent provided in the Contract Documents
2. COUNTY and CONTRACTOR shall communicate with each other in the first instance through the Architect and/or Engineer.
3. The Architect and/or Engineer shall be the initial interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by CONTRACTOR. The Architect and/or Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of CONTRACTOR.
4. The Architect and/or Engineer will review CONTRACTOR's Applications for Payment and will certify to COUNTY for payment to CONTRACTOR, those amounts then due CONTRACTOR as provided in this Agreement.
5. The Architect and/or Engineer shall have authority to reject Work that is defective or does not conform to the requirements of the Contract Documents. If the Architect and/or Engineer deems it necessary or advisable, the Architect and/or Engineer shall have authority to require additional inspection or testing of the Work for compliance with the Contract Documents.
6. The Architect and/or Engineer will review and approve, or take other appropriate action as necessary, concerning CONTRACTOR's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.
7. The Architect and/or Engineer will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.
8. The Architect and/or Engineer shall, upon written request from CONTRACTOR, conduct inspections to determine the date of Substantial Completion and the date of Final Completion, will receive and forward to COUNTY for COUNTY's review and records, written warranties and related documents required by the Contract Documents and will issue a final Certificate for Payment upon compliance with the requirements of Contract Documents.
9. The Architect's and/or Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Agreement.

**C. Claims by CONTRACTOR.**

1. All CONTRACTOR claims shall be initiated by written notice and claim sent to COUNTY and the Architect and/or Engineer. Such written notice and claim must be furnished within seven (7) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
2. Pending final resolution of any claim of CONTRACTOR, CONTRACTOR shall diligently proceed with the Work and COUNTY shall continue to make payments to CONTRACTOR in accordance with Contract Documents. The resolution of any claim under this Subsection shall be reflected by a Change Order executed by COUNTY, the Architect and/or Engineer and CONTRACTOR.

**D. Claims for Concealed and Unknown Conditions** - Should concealed and unknown conditions be encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by Contract Documents, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in work of the character provided for in Contract Documents, be encountered, the Price shall be equitably adjusted by Change Order upon the written notice and claim by either Party made within seven (7) days after the first observance of the condition. As a condition precedent to COUNTY having any liability to CONTRACTOR for concealed or unknown conditions, CONTRACTOR must give COUNTY and the Architect and/or Engineer written notice and claim as provided in this Subsection, and shall constitute a waiver by CONTRACTOR of any claim arising out of or relating to such concealed or unknown condition.

**E. Claims for Additional Cost** – If CONTRACTOR wishes to make a claim for an increase in the Price, as a condition precedent to any liability of COUNTY therefore, CONTRACTOR shall give the Architect and/or

Engineer written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by CONTRACTOR before proceeding to execute any additional or changed Work. The failure by CONTRACTOR to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

1. In connection with any claim by CONTRACTOR against COUNTY for compensation in excess of the Price, any liability of COUNTY for CONTRACTOR's cost shall be strictly limited to direct costs incurred by CONTRACTOR and shall in no event include indirect costs or consequential damages of CONTRACTOR. COUNTY shall not be liable to CONTRACTOR for claims of third parties, including subcontractors, unless and until liability of CONTRACTOR for claims of third parties has been established therefore in a court of competent jurisdiction.

**F. Claims for Additional Time** – If CONTRACTOR is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by COUNTY or someone acting in COUNTY's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond CONTRACTOR's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of CONTRACTOR to COUNTY and the Architect and/or Engineer, for such reasonable time as the Architect and/or Engineer may determine. Any notice and claim for an extension of time by CONTRACTOR shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail CONTRACTOR's basis for requiring additional time in which to complete the Project. In the event the delay to CONTRACTOR is a continuing one, only one notice and claim for additional time shall be necessary. If CONTRACTOR fails to make such claim as required in this Subsection, any claim for extension of time shall be waived.

## **SECTION 12 SUBCONTRACTORS**

**A. Definition.**

A subcontractor is an entity which has a direct contract with CONTRACTOR to perform a portion of the Work.

**B. Award of Subcontractors.**

1. Upon execution of this Agreement, CONTRACTOR shall furnish COUNTY, in writing, the names of persons or entities proposed by CONTRACTOR to act as a subcontractor on the Project. COUNTY shall promptly reply to CONTRACTOR, in writing, stating any objections COUNTY may have to such proposed subcontractor. CONTRACTOR shall not subcontract with any Party to whom COUNTY has objections.
2. All subcontracts shall afford CONTRACTOR rights against the subcontractor which correspond to those rights afforded to COUNTY against CONTRACTOR herein, including those rights afforded to COUNTY.

## **SECTION 13 CHANGES IN THE WORK**

**A. Changes Permitted.**

Changes in the Work within the general scope of this Agreement, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Agreement, by Field Order or by Change Order.

**B. Field Orders.**

The Architect and/or Engineer shall have authority to order minor changes in the Work not involving a change in the Price or in Agreement Time and not inconsistent with the intent of this Agreement. Such changes shall be signed by CONTRACTOR's Superintendent designated in Section "16(O)(2)" below, and shall be binding upon CONTRACTOR. CONTRACTOR shall carry out such Field Orders promptly.

**C. "Change Order" Defined.**

Change Orders shall mean a written order to CONTRACTOR executed by COUNTY and the Architect and/or Engineer, issued after execution of this Agreement, authorizing and directing a change in the Work or an adjustment in the Price or the Time, or any combination thereof. The Price and the Time may be changed only by Change Order. Changed Work cannot be started until a fully executed Change Order is on file with COUNTY; including but not limited to Change Orders that need approval of COUNTY's Board of County Commissioners. Every Change Order shall be executed on behalf of CONTRACTOR only by that individual signing this Agreement on behalf of CONTRACTOR.

**D. Changes in the Unit Prices.**

1. If unit prices are provided for in this Agreement, any changes in the unit prices, as set forth on Exhibit A, resulting from a Change Order, shall be determined as follows: (a) by mutual agreement between COUNTY and CONTRACTOR as evidenced by (1) the change in the unit prices being set forth in the Change Order, (2) such change in the unit prices, together with any conditions or requirements related thereto, being initialed by both Parties and (3) CONTRACTOR's execution of the Change Order, or (b) if no mutual agreement occurs between COUNTY and CONTRACTOR, then, as provided below.
2. If no mutual agreement occurs between COUNTY and CONTRACTOR as contemplated above, the change in the unit prices, if any, shall then be determined by the Architect and/or Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Price, a reasonable allowance for direct job site overhead and profit. In such case, CONTRACTOR shall present, in such form and with such content as COUNTY or the Architect and/or Engineer requires, an itemized accounting of such expenditures or savings plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery, costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from CONTRACTOR or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with CONTRACTOR's home office or other non-job site overhead expense be included in any change in the Price. Pending final determination of reasonable expenditures or savings to COUNTY, payments on account shall be made to CONTRACTOR on the Architect and/or Engineer's Certificate for Payment.
3. If unit prices are provided in this Agreement, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to COUNTY or to CONTRACTOR, the applicable unit prices shall be equitably adjusted.

**E. Effect of Executed Change Order.**

The execution of a Change Order by CONTRACTOR shall constitute conclusive evidence of CONTRACTOR's agreement to this Agreement as thus amended, the Price, Time and the changes in the Work. CONTRACTOR, by executing the Change Order, waives and forever releases any claim against COUNTY for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

**F. Notice of Surety; Consent.**

CONTRACTOR shall notify and obtain the consent and approval of CONTRACTOR's surety with reference to all Change Orders if such notice, consent or approvals are required by CONTRACTOR's surety or by law. CONTRACTOR's execution of the Change Order shall constitute CONTRACTOR's warranty to COUNTY that the surety has been notified of and consents to have expressly consented thereto. CONTRACTOR shall provide to COUNTY a rider to the original bond as provided by the surety.

**SECTION 14**  
**UNCOVERING AND CORRECTING WORK**

**A. Uncovering Work.**

If any of the Work is covered contrary to the Architect and/or Engineer's request or to any provisions of the Contract Documents, it shall, if required by the Architect and/or Engineer or COUNTY, be uncovered for the Architect and/or Engineer's inspection and shall be properly replaced at CONTRACTOR's expense without change in the Time.

**B. Correct Work.**

1. Any defects or deficiencies in materials or workmanship that are deemed by the Architect and/or Engineer or COUNTY as needing immediate correction shall be addressed within thirty (30) days of written notification. Failure to correct the deficiencies within thirty (30) days will result in the deduction of time against the overall Time for completion.
2. CONTRACTOR shall immediately proceed to correct Work rejected by the Architect and/or Engineer as defective or failing to conform to the Contract Documents. CONTRACTOR shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to COUNTY for the Architect and/or Engineer's services and expenses made necessary thereby.

**C. Warranty.**

If within one (1) year after the date of COUNTY's issuance of final payment to CONTRACTOR any of the Work is found to be defective or not in accordance with the Contract Documents, CONTRACTOR shall correct it promptly upon receipt of written notice from COUNTY. This obligation shall survive final payment by COUNTY and termination of this Agreement. With respect to Work first performed and completed after Substantial Completion, this one (1) year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

**D. One Year Duty.**

Nothing contained in this Section shall establish any period of limitation with respect to other obligations which CONTRACTOR has under the Contract Documents. Establishment of the one year time period relates only to the duty of CONTRACTOR to specifically correct the Work.

**E. County May Accept Defective or Nonconforming Work.**

If COUNTY chooses to accept defective or nonconforming Work, COUNTY may do so. In such event, the Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Price, if any, is insufficient to compensate COUNTY for its acceptance of defective or nonconforming Work, CONTRACTOR shall, upon written demand from COUNTY, pay COUNTY such remaining compensation for accepting defective or nonconforming Work.

**SECTION 15**  
**AGREEMENT TERMINATION**

**A. TERMINATION.**

Either Party, upon determination that the other Party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Documents, may give written notice of default to the defaulting Party in the manner specified for the giving of notices herein. Termination of this Agreement by either Party for any reason shall have no effect upon the rights or duties accruing to the Parties prior to termination.

## **1. Termination by COUNTY For Cause.**

- a. If CONTRACTOR persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Agreement, then COUNTY may provide written notice to CONTRACTOR, without prejudice to any other right or remedy, terminate the employment of CONTRACTOR and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by CONTRACTOR any may finish the Work by whatever methods it may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished.
- b. In the event the employment of CONTRACTOR is terminated by COUNTY for cause and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience and the referenced provisions shall apply.
- c. COUNTY has the right to reject participation in this Agreement from anyone who has had previous business with COUNTY and therein failed to comply with the contract governing the project, who has been in litigation with COUNTY, or who has failed to obey the laws.

## **2. Termination by COUNTY For Convenience**

- a. COUNTY reserves the right to terminate performance under this Agreement by CONTRACTOR for convenience. COUNTY shall give written notice of such termination to CONTRACTOR to specify when termination becomes effective.
- b. CONTRACTOR shall incur no further obligations in connection with the Work and CONTRACTOR shall stop Work when such termination becomes effective. CONTRACTOR shall also terminate outstanding orders and subcontractors. CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and/orders. COUNTY may direct CONTRACTOR to assign CONTRACTOR's right, title and interest under terminated orders or subcontracts to COUNTY or its designee.
- c. CONTRACTOR shall transfer title and deliver to COUNTY such completed or partially completed Work and materials, equipment, parts, fixtures, information and contract rights as CONTRACTOR may have.
- d. CONTRACTOR shall submit a termination claim to COUNTY and the Architect and/or Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Architect and/or Engineer. If CONTRACTOR fails to file a termination claim within one (1) year from the effective date of termination, COUNTY shall pay CONTRACTOR, an amount derived in accordance with the Subsection below.
- e. COUNTY and CONTRACTOR may agree to the compensation, if any, due to CONTRACTOR hereunder.
- f. Absent agreement to the amount due to CONTRACTOR, COUNTY shall pay CONTRACTOR the following amounts:
  - (1) Contract prices for labor, materials, equipment and other services accepted under this Agreement.
  - (2) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating CONTRACTOR's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that CONTRACTOR would have not profited or would have sustained a loss if the entirety of this Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rated of loss, if any.
  - (3) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders. These costs shall not include amounts paid in accordance with other provisions hereof. This total sum to be paid CONTRACTOR shall not exceed the total Agreement Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

**3. For Loss of Funding/Cancellation for Unappropriated Funds.**

CONTRACTOR acknowledges that during any fiscal year COUNTY shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Consequently, any agreement, verbal or written, COUNTY may make in violation of this fiscal limitation is null and void, and no money may be paid on such agreement. COUNTY may enter into agreements whose duration exceeds one year, however any such agreement shall be executory only for the value of the services to be rendered which COUNTY agrees to pay as allocated in its annual budget for each succeeding fiscal year. Accordingly, COUNTY's performance and obligation to pay CONTRACTOR under this Agreement is contingent upon annual appropriations being made for that purpose. If during the term of this Agreement COUNTY does not make an annual appropriation necessary to continue its performance under this Agreement, then this Agreement shall terminate upon the expiration date. The Parties will execute an amendment to this Agreement that confirms any termination required by this Section.

**SECTION 16  
MISCELLANEOUS**

**A. LAW, VENUE, WAIVER OF JURY TRIAL, ATTORNEY'S FEES.**

This Agreement and all the Contract Documents shall be construed according to the laws of Florida and shall not be construed more strictly against one Party than against the other because it may have been drafted by one of the Parties. In the event of any legal proceeding arising from or related to this Agreement; (1) venue for State or Federal legal proceedings shall be in Marion County, Florida, (2) for civil proceedings, the Parties consent to trial by the court and waive right to jury trial, (3) the prevailing Party shall be entitled to recover all of its costs, including attorney fees. This section shall survive the termination of this Agreement.

**B. SUCCESSORS AND ASSIGNS.**

COUNTY and CONTRACTOR bind themselves, their successors, assigns and legal representatives to the other Party hereto and to successors, assigns and legal representatives of such other Party in respect to covenants, agreements and obligations contained in this Agreement. CONTRACTOR shall not assign this Agreement without written consent of COUNTY and only with a document of equal dignity herewith.

**C. SURETY BONDS.**

CONTRACTOR shall, if required, acquire, record with the County Clerk, and furnish separate payment and performance bonds to COUNTY. Each bond shall set forth a penal sum in an amount not less than the Price. Each bond furnished by CONTRACTOR shall incorporate by reference the terms of this Agreement as fully as though they were set forth verbatim in such bonds. In the event the Price is adjusted by Change Order executed by CONTRACTOR, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The payment and performance bonds furnished by CONTRACTOR shall be in a form suitable to COUNTY and shall be executed by a surety, or sureties, reasonably suitable to COUNTY, and shall be filed with the County's Clerk of Court.

**D. DAMAGE TO PROPERTY.**

CONTRACTOR shall be responsible for all material, equipment and supplies sold and delivered to COUNTY under this Agreement and until final inspection of the Work and acceptance thereof by COUNTY. In the event any such material, equipment and supplies are lost, stolen, damaged or destroyed, or COUNTY property, buildings, or equipment is damaged during delivery or unloading, or in the course of the WORK prior to final inspection and acceptance, CONTRACTOR shall replace the same or be returned to original state without additional cost to COUNTY, as applicable.

**E. USE OF OTHER CONTRACTS.**

COUNTY reserves the right to utilize any COUNTY contract, State of Florida contract, city or County governmental agency, school board, community college/State university system or cooperative bid

agreement. COUNTY reserves the right to separately bid any single order or to purchase any item on this solicitation and/or this Agreement if it is in the best interest of COUNTY.

**F. EMPLOYEE ELIGIBILITY VERIFICATION.**

1. COUNTY hereby affirms it is duly registered, uses, and adheres to the practices of the E-Verify system, including those outlined in the clauses below.
2. Section 448.095, F.S., requires CONTRACTOR to register and use the E-Verify system to verify the work authorization status of all newly hired employees and prohibits CONTRACTOR from entering into this Agreement unless it is in compliance therewith. Information provided by CONTRACTOR is subject to review for the most current version of the State or Federal policies at the time of the award of this Agreement.
3. By previously signing the ITB Acknowledgment and Addenda Certification Form, and this Agreement, CONTRACTOR has agreed to perform in accordance with the requirements of this Subsection and agrees:
  - (a) It is registered and uses the E-Verify system to verify work authorization status of all newly hired employees.
  - (b) COUNTY shall immediately terminate CONTRACTOR if COUNTY has a good faith belief that CONTRACTOR has knowingly violated Section 448.09(1), F.S., that is, that CONTRACTOR knowingly employed, hired, recruited, or referred either for itself or on behalf of another, private or public employment within the State an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States.
  - (c) If CONTRACTOR enters into a contract with a subcontractor, CONTRACTOR shall obtain from the subcontractor an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.
  - (d) CONTRACTOR shall maintain a copy of such affidavit for the duration of this Agreement and provide it to COUNTY upon request.
  - (e) CONTRACTOR shall immediately terminate the subcontractor if CONTRACTOR has a good faith belief that the subcontractor has knowingly violated Section 448.09(1), F.S., as set forth above.
  - (f) If COUNTY has a good faith belief that CONTRACTOR's subcontractor has knowingly violated Section 448.095, F.S., but that CONTRACTOR has otherwise complied, COUNTY shall promptly order CONTRACTOR to terminate the subcontractor. CONTRACTOR agrees that upon such an order, CONTRACTOR shall immediately terminate the subcontractor. CONTRACTOR agrees that if it should fail to comply with such an order, COUNTY shall immediately terminate CONTRACTOR.
  - (g) If COUNTY terminates this Agreement with CONTRACTOR, CONTRACTOR may not be awarded a public contract for at least one (1) year after the date of termination.
  - (h) CONTRACTOR is liable for any additional costs incurred by COUNTY as a result of a termination under this Subsection.
  - (i) Any such termination under this Subsection is not a breach of this Agreement and may not be considered as such.
  - (j) CONTRACTOR shall maintain records of its registration, use, and compliance with the provisions of the E-Verify system, including the registration and use by its subcontractors, and to make such records available to COUNTY or other authorized governmental entity.
  - (k) To comply with the terms of this Employment Eligibility Verification provision is made an express condition of this Agreement and COUNTY may treat a failure to comply as a material breach of this Agreement.

**G. FORCE MAJEURE.**

Neither CONTRACTOR nor COUNTY shall be considered to be in default in the performance of its obligations under this Agreement, except obligations to make payments with respect to amounts already accrued, to the extent that performance of any such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control and not a result of the fault or negligence of, the affected Party (a "Force Majeure Event"). If a Party is prevented or delayed in the



performance of any such obligations by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party so affected by a Force Majeure Event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable. A Force Majeure Event shall include, but not be limited to acts of civil or military authority (including courts or regulatory agencies), war, riot, or insurrection, inability to obtain required permits or licenses, acts of God, hurricanes and severe floods, epidemics and pandemics.

#### **H. COUNTERPARTS.**

Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the Parties and conclusive proof of such agreement. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. COUNTY shall determine legibility and acceptability for public record purposes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

#### **I. AUTHORITY TO OBLIGATE.**

1. The individual signing below is:
  - a. An officer or member of CONTRACTOR verifiable on <https://dos.myflorida.com/sunbiz/> or
  - b. Has, in advance, provided a form of written authority to bind CONTRACTOR in a form acceptable to COUNTY and signed by a representative of CONTRACTOR as described in Section "I(1)(a)" above.
2. The signature by any person to this Agreement shall be deemed a personal warranty by that person that she/he has the full power and authority to bind the entity for which that person is signing and to sign all documents referenced in this Agreement on behalf of CONTRACTOR.

#### **J. PUBLIC RECORDS COMPLIANCE.**

##### **A. IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

**Public Relations, 601 SE 25<sup>th</sup> Ave, Ocala, FL 34471**

**Phone: 352-438-2300 | Fax: 352-438-2309**

**Email: [publicrelations@marionfl.org](mailto:publicrelations@marionfl.org)**

##### **B. CONTRACTOR shall comply with public records laws, specifically:**

1. Keep and maintain public records required by COUNTY to perform the Work;
2. Upon request from COUNTY's custodian of public records, provide 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;
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 Term and following completion of this Agreement if CONTRACTOR does not transfer the records to COUNTY; and,
4. Upon completion of this Agreement, transfer, at no cost, to COUNTY, all public records in possession of CONTRACTOR or keep and maintain public records required by COUNTY to perform the Work. If CONTRACTOR transfers all public records to COUNTY upon completion of this Agreement, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon the completion of this Agreement, CONTRACTOR

shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to COUNTY, upon request from COUNTY's custodian of public records, in a format that is compatible with the information technology systems of COUNTY.

- C. If CONTRACTOR fails to provide the public records to COUNTY within a reasonable time, CONTRACTOR may be subject to penalties under Section 119.10 F.S. and may be subject to unilateral cancellation of this Agreement by COUNTY. This section shall survive the termination of this Agreement.

**K. CONTRACTOR CONDUCT.**

1. These Guidelines govern CONTRACTOR while doing work on COUNTY's property, as well as its employees, agents, consultants, and others on COUNTY's property in connection with CONTRACTOR's work or at CONTRACTOR's express or implied invitation.
  - a. Courtesy and Respect: COUNTY is a diverse government institution and it is critical that CONTRACTOR and its employees conduct themselves in a manner that is lawful, courteous, businesslike, and respectful of all staff, guests, or visitors.
  - b. Language and Behavior: CONTRACTOR and its employees cannot engage in behavior that is rude, threatening, or offensive. Use of profane or insulting language is prohibited. Harassment of any type, including sexual harassment is strictly prohibited. Abusive, derogatory, obscene or improper language, gestures, remarks, whistling, cat calls or other disrespectful behavior cannot be tolerated. Roughhousing, fighting, fisticuffs, physical threats, destruction of property, vandalism, littering, or physical abuse of anyone on COUNTY's property is not permitted under any circumstance.
  - c. No Weapons, Alcohol, or Drugs: The use, possession, distribution, or sale of any weapon, alcohol, illegal drug, or controlled dangerous substance by CONTRACTOR or its employees is prohibited. Offenders will be removed from COUNTY's property and/or reported to law enforcement.
  - d. Smoking: CONTRACTOR and its employees are not permitted to smoke in or near COUNTY's buildings.
  - e. Fraternization: CONTRACTOR and its employees may not fraternize or socialize with COUNTY's staff.
  - f. Appearance: CONTRACTOR and its employees are required to wear appropriate work wear, hard hats and safety footwear, as the case may be, while on the job. Clothing must be neat and tidy in appearance, and cannot display offensive or inappropriate language, symbols or graphics. COUNTY has the right to decide if such clothing is inappropriate.
  - g. Reporting: CONTRACTOR is required to report any matter involving a violation of these rules or any matter involving health or safety, including any altercations, should be reported to COUNTY's Procurement Services Department immediately.
2. CONTRACTOR is responsible for its employees, agents, consultants and guests. If prohibited conduct does occur, CONTRACTOR will takes all necessary steps to stop and prevent any future occurrence. Any breach of these conditions will result in the removal of the person responsible from COUNTY's property and prohibited actions could result in the immediate termination of any or all contracts or agreements CONTRACTOR has with COUNTY.

**L. SCRUTINIZED COMPANIES.**

**A. Certification.**

1. If this Agreement is for One Million Dollars or more, CONTRACTOR certifies that at the time it submitted its bid or proposal for this Agreement or before entering into this Agreement or renewing same, CONTRACTOR was not then and is not now:
  - a. On the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S., or
  - b. Engaged in business operations in Cuba or Syria.
2. If this Agreement is for any amount, CONTRACTOR certifies that at the time it submitted its bid or proposal for this Agreement or before entering into this Agreement or renewing same, CONTRACTOR was not then and is not now:

- a. On the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or
  - b. Engaged in a boycott of Israel.
- B. Termination, Threshold Amount. COUNTY may, entirely at its option, terminate this Agreement if it is for One Million Dollars and CONTRACTOR meets any of the following criteria.
  - 1. Was entered into or renewed on or after July 1, 2011, through June 30, 2012, and CONTRACTOR is found to meet any of the following prohibitions:
    - a. Submitted a false certification as provided under Section 287.135(5), F.S., or
    - b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S.
  - 2. Was entered into or renewed on or after July 1, 2012, through September 30, 2016, and CONTRACTOR is found to meet any of the following prohibitions:
    - a. Submitted a false certification as provided under Section 287.135(5), F.S.;
    - b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S.; or
    - c. Been engaged in business operations in Cuba or Syria.
  - 3. Was entered into or renewed on or after October 1, 2016, through June 30, 2018, and CONTRACTOR is found to meet any of the following conditions:
    - a. Submitted a false certification as provided under Section 287.135(5), F.S.;
    - b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S.;
    - c. Been engaged in business operations in Cuba or Syria; or
    - d. Been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel.
  - 4. Was entered into or renewed on or after July 1, 2018, and CONTRACTOR is found to meet any of the following prohibitions:
    - a. Submitted a false certification as provided under Section 287.135(5), F.S.;
    - b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S.; or
    - c. Been engaged in business operations in Cuba or Syria.
- C. Termination, Any Amount. COUNTY may, entirely at its option, terminate this Agreement if it is for any amount and meets any of the following criteria.
  - 1. Was entered into or renewed on or after July 1, 2018, and
  - 2. CONTRACTOR is found to have been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel.
- D. Comply; Inoperative. The Parties agree to comply with Section 287.135, F.S., as it may change from time to time during the Term. The contracting prohibitions in this Section become inoperative on the date that Federal law ceases to authorize the State of Florida to adopt and enforce such contracting prohibitions.

**M. SOVEREIGN IMMUNITY**

Nothing in this Agreement shall be deemed to waive the sovereign immunity protections provided COUNTY pursuant to Florida law. Notwithstanding anything stated to the contrary in this Agreement, any obligation of COUNTY to indemnify CONTRACTOR, if provided, is limited and shall not exceed the limits set forth in Section 768.28, Florida Statutes. This Section shall survive the termination of this Agreement.

**N. ON-GOING COMPLIANCE**

The Parties acknowledge that this Agreement may contain provisions prescribed by laws, statutes, and regulations that can change during the Term of this Agreement. The Parties understand and agree that this Agreement is intended to reflect and require the Parties' compliance with all laws at all times. The Parties expressly and specifically agree to perform this Agreement in full compliance with the governing laws, statutes, and regulations, as same may change from time to time.

**O. SUPERVISION.**

1. CONTRACTOR shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from CONTRACTOR to the contrary, the superintendent shall be deemed CONTRACTOR's authorized representative at the site and shall be authorized to receive and accept any and all communications from COUNTY or the Architect and/or Engineer.
2. Key supervisory personnel assigned by CONTRACTOR to this Project are as follows:

	Project Manager
	Superintendent Sole member of personnel to authorized to execute Applications for Payment, request final inspection, and execute Field Orders.
	Foreman
	Equipment Operator(s)

**P. NOTICES.**

1. All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served or when reflected by a receipt, i.e, an electronic mail read receipt, a courier service delivery receipt, or when receipt is acknowledged by recipient. All Parties certify that each has software capable of sending electronic mail read receipts to the other. Any Party sending notice by electronic mail acknowledges and accepts the inherent risks that come with same. If notice is delivered in multiple ways, notice shall be considered delivered at the earliest delivery time. CONTRACTOR's and COUNTY's representatives and addresses for notice purposes are:

CONTRACTOR: Superior Asphalt, Inc.  
4801 15th Street East, Bradenton, FL 34203  
CONTACT PERSON: Al Mulvey | Phone: 941-755-2850

COUNTY: Marion County Office of the County Engineer  
c/o Marion County, a political subdivision of the State of Florida  
601 SE 25<sup>th</sup> Ave, Ocala, FL 34471

**A copy of all notices to COUNTY hereunder shall also be sent to:**

Procurement Services Director  
Marion County Procurement Services Department  
2631 SE 3rd St., Ocala, FL 34471

2. Election to Solely Receive Notice by Email.  
Alternatively, the Parties may elect to receive said notices by e-mail.
  - a. COUNTY hereby elects to receive all notices solely by email and designates its email address as [procurement@marionfl.org](mailto:procurement@marionfl.org).
  - b. If CONTRACTOR agrees to accept all notices solely by e-mail and acknowledges and accepts the inherent risks that come with such method, CONTRACTOR may designate up to two (2) e-mail addresses. Designation signifies CONTRACTOR's election to accept notices solely by e-mail.  
[amulvey@superiorasphaltinc.net](mailto:amulvey@superiorasphaltinc.net).

IN WITNESS WHEREOF the Parties have entered into this Agreement, as approved by the Marion County Board of County Commissioners, on the date of the last signature below.

ATTEST:

MARION COUNTY, A POLITICAL SUB-DIVISION OF THE STATE OF FLORIDA

GREGORY C. HARRELL,                      DATE  
CLERK OF COURT

MICHELLE STONE                                      DATE  
CHAIRMAN

FOR RELIANCE BY MARION COUNTY ONLY, APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BCC APPROVED:  
March 19, 2024  
24B-082 | CR 320 Resurface (County Line to NW 221st St Rd)

MATTHEW G. MINTER,  
MARION COUNTY ATTORNEY

\*\*\*\*\*

WITNESS:

SUPERIOR ASPHALT, INC.

SIGNATURE  
PRINTED NAME

BY:                                      DATE  
PRINTED:  
ITS: (TITLE)

WITNESS

SIGNATURE  
PRINTED NAME

24B-082 CR 320 Resurface (County Line to NW 221<sup>st</sup> St Rd)  
EXHIBIT A – SCHEDULE OF VALUES

PAY ITEM #	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST
1	<b>MOBILIZATION AND SPECIAL PROVISIONS</b>	1	LS	\$125,337.00	\$125,337.00
2	<b>PREVENTION, CONTROL AND ABATEMENT OF EROSION AND WATER POLLUTION</b>	1	LS	\$24,000.00	\$24,000.00
3	<b>CONSTRUCTION LAYOUT</b>	1	LS	\$33,100.00	\$33,100.00
4	<b>MAINTENANCE OF TRAFFIC</b>	1	LS	\$149,260.00	\$149,260.00
5	<b>CLEARING &amp; GRUBBING</b>	1	LS	\$22,760.00	\$22,760.00
6	<b>EARTHWORK</b>	1	LS	\$47,500.00	\$47,500.00
7	<b>ROADWAY</b>				
7.1	FC-9.5 FRICTION COURSE (TRAFFIC C)(PG 76-22)(1.0")	36,498	SY	\$9.30	\$339,431.40
7.2	SP-12.5 VARIABLE THICKNESS OVERBUILD COURSE (TRAFFIC C)(PG 58-22)(SPREADRATE = 190 LBS/SY)	4,015	TN	\$140.30	\$563,304.50
7.3	TACK COAT	72,996	SY	\$0.45	\$32,848.20
7.4	PAVEMENT PREPARATION	72,996	SY	\$0.45	\$32,848.20
8	<b>DRIVEWAYS &amp; SIDE STREETS</b>				
8.1	ASPHALT APRONS (AT EXISTING PAVED DRIVEWAYS) (8)				
8.1.1	ASPHALT APRONS FC-9.5	139	SY	\$20.20	\$2,807.80
8.1.2	TACK COAT	139	SY	\$0.65	\$90.35
8.2	NEW ASPHALT APRONS (AT EXISTING PAVED DRIVEWAYS) (13)				
8.2.1	NEW ASPHALT DRIVEWAY FC-9.5	134	SY	\$20.20	\$2,706.80
8.2.2	6" LIMEROCK BASE	134	SY	\$31.90	\$4,274.60
8.2.3	PRIME COAT	134	SY	\$13.25	\$1,775.50
8.3	CONCRETE APRON 6" DEPTH (4)	231	SY	\$100.50	\$23,215.50
8.4	SIDE ROAD APRONS (EXISTING) (1)				
8.4.1	SIDE ROAD APRONS FC-9.5	98	SY	\$29.00	\$2,842.00
8.4.2	TACK COAT	98	SY	\$2.30	\$225.40
9	<b>ROADSIDE SOD (BAHIA OR MATCH EXISTING)</b>	29,198	SY	\$3.25	\$94,893.50
10	<b>SILT FENCE-STAKED TYPE III</b>	32,848	LF	\$1.30	\$42,702.40
11	<b>MOWING</b>	5	AC	\$1,000.00	\$5,000.00
12	<b>STORMWATER</b>				
12.1	REINFORCED CONCRETE PIPE, 24"	317	LF	\$136.00	\$43,112.00
12.2	CONCRETE COLLAR, 24"	4	EA	\$439.00	\$1,756.00
12.3	CONCRETE MITERED END SECTION, 24", 4:1	9	EA	\$2,875.00	\$25,875.00
12.4	CONCRETE MITERED END SECTION, 24", 4:1 (2 PIPES)	4	EA	\$4,800.00	\$19,200.00
12.5	CONCRETE MITERED END SECTION, 24", 4:1 (3 PIPES)	2	EA	\$7,820.00	\$15,640.00
12.6	CONCRETE MITERED END SECTION, 18", 4:1	1	EA	\$2,195.00	\$2,195.00
12.7	DELINEATOR, WITH POST	28	EA	\$169.75	\$4,753.00
13	<b>PAVEMENT MARKINGS</b>				
13.1	TEMPORARY STRIPING-PAINT				
13.1.1	4" YELLOW SOLID DOUBLE	7,664	LF	\$0.70	\$5,364.80
13.1.2	4" 10-30 SKIP YELLOW / 4" SOLID YELLOW	2,478	LF	\$0.90	\$2,230.20
13.1.3	4" 10-30 SKIP YELLOW	6,192	LF	\$0.20	\$1,238.40
13.1.4	4" WHITE SOLID (EDGE)	32,758	LF	\$0.35	\$11,463.30
13.2	PERMANENT STRIPING-THERMOPLASTIC				

	13.2.1	6" YELLOW SOLID DOUBLE	7,664	LF	\$2.35	\$18,010.40
	13.2.2	6" 10-30 SKIP YELLOW/ 6" SOLID YELLOW	2,478	LF	\$1.45	\$3,593.10
	13.2.3	6" 10--30 SKIP YELLOW	6,192	LF	\$0.30	\$1,857.60
	13.2.4	6" WHITE SOLID (EDGE)	32,758	LF	\$1.20	\$39,309.60
	13.3	REFLECTIVE PAVEMENT MARKERS				
	13.3.1	BI-DIRECTIONAL AMBER/AMBER	667	EA	\$4.70	\$3,134.90
14		<b>SIGN-REMOVAL AND REPLACEMENT</b>	1	EA	\$1,170.75	\$1,170.75
15		<b>AS-BUILT SURVEY</b>	1	EA	\$17,000.00	\$17,000.00
					<b>TOTAL</b>	\$1,767,829.20

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