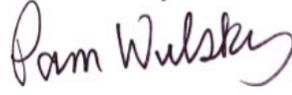
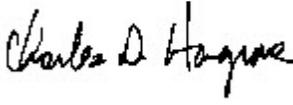
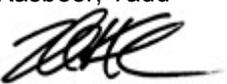
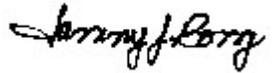


Date: 07/21/2020		AGENDA ITEM				Item: 13	
<input type="checkbox"/> Ordinance		<input type="checkbox"/> Resolution		<input type="checkbox"/> Budget Resolution		<input type="checkbox"/> Other	
County Goals							
<input type="checkbox"/>	Thriving Communities	<input checked="" type="checkbox"/>	Economic & Financial Vitality	<input type="checkbox"/>	Excellence In Government	<input type="checkbox"/>	NA
Department: Public Works							
Division: Engineering							
Subject: Contract with P & S Paving, Inc. for countywide resurfacing, 20-B-113IF, C1731.							
John Angiulli Director Public Works  Department Approval		Pamela Wilsky  Approved in Accordance with Purchasing Policies and Procedures		Legal Charles Hargrove Deputy County Attorney 		County Manager's Office Ryan Ossowski Chief Financial Officer 	
Kasbeer, Tadd  Division Approval		Tammy Bong Director Management and Budget  Approved as to Budget Requirements		Approved as to Form and Legality			
Council Action:							
Modification:							
Fund Number(s):		Description:				Amount:	
103 County Transportation Trust		103-710-4330-4690				\$5,390,459.40	
Total Item Budget: \$5,390,459.40							
Staff Contact(s)				Phone:		Ext.	
Tadd Kasbeer, P.E.				386 736 5967		15846	
Summary/Highlights:							
<p>The county received three bids, as detailed on the attached tabulation sheet, to resurface county roads. Staff generates a prioritized list based on several factors and bundles the top roads into the annual resurfacing contract.</p> <p>Staff recommends selection and award of a contract in the amount of \$5,390.459.40 to the lowest responsive and responsible bidder, P & S Paving, Inc., Daytona Beach, Florida, inclusive of performance and payment bond.</p> <p>A copy of the partially executed contract without exhibits is attached. Copies of the complete agreement and applicable exhibits are available for review in the purchasing and contracts division.</p>							
Recommended Motion: Approval.							

**COUNTY OF VOLUSIA, FL
RECOMMENDATION OF AWARD**

BID NUMBER: 20-B-113IF, C-1731
BID TITLE: Countywide Resurfacing 2020
OPENING DATE/TIME: 05.28.2020 at 3:00 P.M.

ALL BIDS ACCEPTED BY THE COUNTY OF VOLUSIA ARE SUBJECT TO THE COUNTY'S TERMS AND CONDITIONS. ANY AND ALL ADDITIONAL TERMS AND CONDITIONS SUBMITTED BY THE BIDDERS ARE REJECTED AND SHALL HAVE NO FORCE AND EFFECT. BID DOCUMENTS FROM THE VENDORS LISTED HEREIN ARE THE ONLY BIDS RECEIVED TIMELY AS OF THE OPENING DATE AND TIME. ALL OTHER BID DOCUMENTS SUBMITTED IN RESPONSE TO THIS SOLICITATION, IF ANY, ARE HEREBY REJECTED AS LATE.

	Response 1	Response 2	Response 3
	P&S Paving, Inc. 3701 Olson Drive Daytona Beach, FL 32124 Tim Phillips 386-258-7911 toddphillips@pandspavinginc.com	Halifax Paving, Inc. 814 Hull Road Ormond Beach, FL 32174 Joseph Durrance 386-676-0200 halifaxpaving@cfl.rr.com	Masci General Contractor, Inc. 5752 S. Ridgewood Ave. Port Orange, Florida 32127 Leticia Masci 386-322-4500 masciestimate@mascigc.com
Total Bid (inclusive of performance and payment bonds):	\$5,390,459.40	\$5,929,958.37	\$7,140,530.64

Opened by: Kathy Williams, Procurement Manager and Inga Fegley, Senior Procurement Analyst
Tabulated by: Inga Fegley, Senior Procurement Analyst
Recommendation of Award: P & S Paving, Inc.
County Council Meeting Date: 07.21.2020
Posted: 06.12.2020

Reviewed by: 
 Pam Wilsky
 Director of Purchasing and Contracts

2019-2020 Annual Resurfacing

Ormond	John Anderson Dr	Plaza Dr.	Palm Drive
Daytona	LPGA West	Clyde Morris Blvd	Williamson Blvd
New Smyrna	Turnbull Creek Rd	Williams Rd.	Williams Rd.
New Smyrna	Glencoe Rd. #2	Pioneer Trail	Burnell Ct.
New Smyrna	Williams Rd.	Pioneer Trail	Mooneyham Dr
New Smyrna	Williams Rd.	Mooneyham Dr	Turnbull Bay Rd
Deland	Old Daytona Rd	Marsh Rd.	Hwy 92
Deland	Carter Rd.	SR-11	Marsh Rd.
Deland	E. Beresford Av.	Alabama Ave.	330' west of Boston Ave
Deland	S. Beresford Rd.	Old New York	90 Degree Turn
Deland	McGregor Rd	Stately Oaks Lane	Hwy 17-92
Orange City	Taylor Rd.	Blue Lake Ave	Dr. MLK Jr.
Orange City	Firehouse Rd	US-17	US-17
Lake Helen	Prevatt Ave.	SR-44	Lake Helen City Limits
Deltona	Saxon Blvd.	Azora Dr.	Providence Blvd
Deltona	Providence Blvd	Giles St	S. End Municipal Complex
Pierson	Volusia Ave/CR 3	Washington Ave	Palmetto Ave
Pierson	Volusia Ave/ CR 3	Emporia Rd	Blackburn Rd
Deland	Amelia Ave	Plymouth Ave	Hwy 92
New Smyrna	Kersey Rd./Powerline Rd	CR-415	Smith Rd.
New Smyrna	Rasley Rd./Archie Drive	CR-415	End of Road
Orange City	Caldwell Dr.	End of Road	Florida Ave
Orange City	Call Ave	Collins Ave	End of Road
Deland	Fig St./Stone Ave/Guava St	Grand Ave.	Rogers Rd
Deland	GayleDr./CecilAve/KeithAve	Spring Garden Ave	SR-15A
Port Orange	Avocado Dr.	End of Rd	CR-415
Wilbur By The Sea	Marcelle Avenue	S. Peninsula Drive	Cardinal Blvd
Wilbur By The Sea	Teal St.	S. Peninsula Drive	S. Atlantic Ave
Wilbur By The Sea	Mallard St	S. Peninsula Drive	S. Atlantic Ave
Wilbur By The Sea	Heron St.	S. Peninsula Drive	S. Atlantic
Wilbur By The Sea	Egret Ave	S. Peninsula Drive	Cardinal Blvd
Wilbur By The Sea	Toronita Ave	S. Peninsula Drive	Cardinal Blvd
Wilbur By The Sea	Oriole Ave	Toronita Ave	Egret Ave
Wilbur By The Sea	Oriole Ave	Heron St	Mallard St
Wilbur By The Sea	S. Peninsula	Marcelle Ave	Toronita Ave
Wilbur By The Sea	Cardinal Blvd	Marcelle Ave	Toronita Ave
Deland	Florida Ave	Calvin St	W. Beresford Ave
Port Orange	Avocado Dr.	End of Road	CR 415
Port Orange	Avocado Dr	CR 415	Jerry Circle
Edgewater	Tatum Blvd	Roberts Ln	1755 Tatum Blvd
Oak Hill	Stacy Grove Rd	End Pvmt	US Hwy 1



CONSTRUCTION CONTRACT

Between

THE COUNTY OF VOLUSIA

AND

P & S PAVING, INC.

Contract No. C-1731

ITB No. 20-B-113IF

Project No. 5412-C

County of Volusia
Purchasing and Contracts Division
123 West Indiana Avenue, Room 302
Deland, Florida 32720-4608
www.volusia.org/purchasing

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**CONSTRUCTION CONTRACT FOR COUNTYWIDE RESURFACING 2020
FOR THE COUNTY OF VOLUSIA**

THIS CONTRACT is made and entered into by and between the COUNTY OF VOLUSIA, FLORIDA, a body corporate and politic and a political subdivision of the State of Florida, with its principal office located at 123 West Indiana Avenue, Deland, Florida 32720-4613 (the "County"); and P & S Paving, Inc., a corporation duly authorized to conduct business in the State of Florida, with its principal office located at 3701 Olson Drive, Daytona Beach, Florida 32124 (the "Contractor").

RECITALS:

WHEREAS, the County desires to retain the Contractor in accordance with ITB No. 20-B-113IF (the "ITB"); and

WHEREAS, Contractor is competent and qualified to furnish the specified services to the County and desires to provide such services according to the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the mutual covenants, and considerations set forth in the Contract, the County and Contractor agree as set forth herein.

ARTICLE 1 - THE CONTRACT DOCUMENTS & PERMITS

1.1 The "Contract" between the County and Contractor consist of the Contract Documents which shall include the following: this Contract, the General Conditions, the Contractor's Bid Documents, the Contract Plans and Technical Specifications (Contract Plans), Specifications, and related forms and appendices, Addenda issued prior to execution of this Contract, Modifications issued after execution of this Contract, all of which form the Contract and are incorporated herein.

1.2 **Exhibits.**

1.2.1 The exhibits listed below are incorporated into and made a part of this Contract.

- 1.2.1.1 Exhibit "A" - General Conditions
- 1.2.1.2 Exhibit "B" - Special Conditions (*if applicable*)
- 1.2.1.3 Exhibit "C" - Bid Documents and Insurance Requirements
- 1.2.1.4 Exhibit "D" - Performance & Payment Bonds
- 1.2.1.5 Exhibit "E" - Construction Plans
- 1.2.1.6 Exhibit "F" - Technical Specifications

1.3 Enumeration and clarification as to the applicability of some of the Contract Documents is further described below.

1.3.1 Contract Plans and Technical Specifications include the most recent versions of the following:

- Technical Special Provisions

1.4 **Permits.** The County has secured the permits enumerated in Section 1.4.1 below. Contractor shall strictly comply with the requirements of the permits and the permitting agencies.

1.4.1 N/A

1.5 Contractor shall obtain and pay for any permits not enumerated in Section 1.4.1 above, as required to perform the Work and complete the Project.

1.6 **Authority for Contracting.**

1.6.1 By executing this Contract, the Contractor represents that it has visited the site, familiarized itself with the local conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation:

1.6.1.1 The location, conditions, layout and nature of the Project site and surround,

1.6.1.2 Anticipated labor supply and costs,

1.6.1.3 Availability and cost of materials, tools, equipment, and other similar issues, and

1.6.1.4 The County assumes no responsibility or liability for the physical conditions or safety of the Project site or any improvements located on the Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work and the County shall not be required to make any adjustment in either the agreed amount of the Contract Price or the Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements hereof.

1.6.2 This Contract between the County and the Contractor is intended solely for the benefit of the County and the Contractor and no other persons or entities. The services to be performed hereunder shall be performed by the Contractor's own staff, unless otherwise authorized by the County. The employment of, contract with, or use of the services of any other person or firm by the Contractor, as consultant or otherwise, shall be subject to the prior written approval of the County. Such approval shall not be construed as constituting a Contract between the

County and any such person or firm. Failure to obtain such approval or the use of unauthorized persons, firms, consultants, or subcontractors shall constitute a material breach of this Contract.

- 1.6.3 In the event the parties hereto enter into a subsequent Contract specifically modifying this Contract between County and Contractor, it is expressly agreed that such modification shall take precedence over this Contract to the extent of the modification only.
- 1.6.4 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.
- 1.6.5 Work not covered in the Contract Documents shall not be required unless it is consistent therewith and is reasonably inferable there from as being necessary to produce the intended results.
- 1.6.6 Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.6.7 The organization of the Technical Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any one of them.
- 1.6.8 **Order of Precedence.** If Contractor finds a conflict, error or discrepancy in the Contract Documents, it shall call it to the Architect/Engineer's attention, in writing, and request the Architect/Engineer's interpretation and direction before proceeding with the Work affected thereby. Such notice shall be provided by the Contractor to the Architect in a timely fashion so as not to cause additional costs due to delay. In resolving such conflicts, errors and discrepancies, the documents shall be given precedence in the following order:
 - 1.6.8.1 Modifications to the Contract
 - 1.6.8.2 Contract between the County and Contractor
 - 1.6.8.3 Exhibit A-General Conditions
 - 1.6.8.4 Exhibit B-Special Conditions
 - 1.6.8.5 Exhibit C-Bid Documents and Insurance Requirements
 - 1.6.8.6 Exhibit D-Performance and Payment Bonds
 - 1.6.8.7 Contractor's Bid Proposal
 - 1.6.8.8 Bonds and Guaranties
- 1.6.9 In the case of conflicts between drawings or between provisions of the specifications, the more detailed or specific of the conflicting provisions or representations shall take precedence. For example, where figured dimensions

are shown on the drawings, they shall take precedence over scaled distances and scaled dimensions, and detail drawings shall govern over general drawings.

- 1.6.10 In those cases where it is not reasonably clear which of the conflicting provisions or representations is the more detailed or specific, the Contractor shall be deemed to have estimated on, and agreed to provide, the greater quantity or better quality of materials and work unless he shall have, prior to submitting the Contract Price, asked for and obtained a written decision of the A/E as to which quantity or quality or method or materials shall be required.

ARTICLE 2 - CONTRACTOR'S SERVICES AND TERM

- 2.1 The Contractor agrees during the term of this Contract to timely complete projects as specified by the County ("Projects"). Contractors shall provide all survey, permits, labor, supervision, and equipment necessary to provide for construction services in accordance with specifications provided by the County in Exhibit "E", Drawings and Technical Specifications, other contract documents prepared by Volusia County, and all applicable building codes.
- 2.2 The Contractor shall diligently proceed with the completion of the Project in accordance with the date expressly set forth in the Notice to Proceed.
- 2.3 **Liquidated Damages.** If applicable, should the Contractor fail to timely meet the Work requirements of the Project by the Completion Date, the parties hereto agree that as liquidated damages, and not as penalty, the Contractor shall pay to the County ONE THOUSAND DOLLARS and 00/100 (\$1,000.00) for each day after the Completion Date, until the Project is completed, as certified by the County Project Manager. The dollar amount for liquidated damages will be determined by the level of risk to the County. Liquidated damages will only be assessed to recover actual cost incurred by the County.
- 2.4 **Term.** The Work to be performed under this Contract shall be substantially completed within two hundred ten (210) days after delivery of notice from the County to Contractor to proceed ("Notice to Proceed"). The Work shall be fully completed thirty (30) days after the actual date of substantial completion for a total contract time of two hundred forty (240) days after the Notice to Proceed.
- 2.5 Contractor shall at all times diligently pursue completion of the Work and shall make all commercially reasonable efforts to avoid delay in progress of the Work. Contractor shall promptly notify County if Contractor experiences any delay in performance of the Work.
- 2.6 In the event that the Contractor shall fall behind schedule at any time, for any reason, and such delay is adversely affecting the County's timely occupation of the Project for its intended purpose, the County shall be entitled to direct acceleration or re-sequencing of the Work to bring the Project back on schedule. The Contractor shall reserve in each of its subcontracts entered into in connection with the Project, a right to accelerate consistent with the Contractor's obligations hereunder.

- 2.7 In the event the Contractor determines that the Completion Date cannot be met by re-sequencing the work, then the Contractor shall immediately provide the County, and in any event within three (3) days after the date of receipt of the County's instruction for re-sequencing or accelerating, a plan to complete the Project in the shortest possible time. No approval by the County of any plan for re-sequencing or accelerating of the work submitted by the Contractor pursuant to this clause shall constitute a waiver by the County of its rights of recovery of liquidated damages as a result of delayed Project completion.
- 2.8 **Change in Scope of Services/Work.** The County may order changes in the service consisting of additions, deletions, or other revisions within the general scope of the Contract, insurance and bond requirements, as applicable. No claims may be made by the Contractor to change the amount of compensation of the Contractor or other adjustments to the Scope of Services/Work, unless such changes or adjustments have been made by written amendment to this Contract and duly executed by the County. If the Contractor believes that any particular service is not within the Scope of Services/Work described in this Contract, is a material change, or will otherwise require more compensation to the Contractor, the Contractor shall immediately notify the County Project Manager in writing, of this belief. If the County Project Manager determines that the particular work is within the Scope of Services/Work, the Contractor shall continue with the work at the cost stated for the work within the scope. The Contractor shall assert a right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order and the assertion shall be written, and shall be sent in accordance with the notice requirements of Section 11.2 - Notice. No additional work shall be performed or extra materials purchased until an amendment or change order to this Contract has been fully executed by all parties.
- 2.8.1 Changes in the Services/Work shall be made in accordance with Section 10.4.2 of the General Conditions.
- 2.9 **Acceptance of Work.** Inspection of the finished work shall be performed by the County to determine the acceptability of the work for payment. As a result of said inspections, the County will provide the Contractor with a "punch list" of items considered by the County to be substandard. If after seven (7) days the Contractor fails to remedy all punch list items to the satisfaction of the County, the County may, but shall not be obligated to cause all such remaining items to be remedied through the use of other contractors and deduct the cost.
- 2.10 **Release of Liens.** The Contractor shall deliver to the County, a complete release of liens arising out of each project before receiving payment. If any liens remain unsatisfied after all payments are made, the Contractor shall refund to the County such amount as the County may be compelled to pay in discharging such liens, including all costs and reasonable attorney's fees.

2.11 Responsibility of the Contractor.

2.11.1 All work shall be scheduled and performed during normal business hours (Monday to Friday, 8:00 a.m. to 5:00 p.m. EST) unless otherwise approved by the County.

2.11.2 The Contractor and County shall be jointly responsible for verifying unit quantities per project or per phase of each project. The Contractor shall be responsible for verifying the quantities and the removal of all materials identified in the project description, survey, plans, specifications and other contract documents. When asbestos removals are indicated, the requirement is to remove all regulated or non-friable asbestos-containing material from the locations and systems noted in the Project description, survey, plans, specifications and other contract documents. The requirement shall also include incidental accessories that are a part of the system.

2.11.3 **General Provisions.** The Contractor shall supervise and direct the Work, using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract including coordination of the work of all Subcontractors.

2.11.3.1 Unless otherwise provided in the Contract Documents, Contractor shall furnish and pay for all labor, materials, equipment, tools, construction equipment and machinery, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work. The Contractor shall check all materials entering the Project site, including materials furnished under trade contracts, and labor performing any portion of the Work and shall keep full detailed accounts of such materials and labor.

2.11.3.2 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, cleaned and conditioned in accordance with manufacturers' recommendations. Likewise, materials and equipment shall be stored in accordance with manufacturers' recommendations, or in such a manner as to insure the preservation of their quality and fitness for incorporation in the Work. When considered necessary by the Architect, such materials and equipment shall be placed on wooden platforms or other elevated surfaces, and/or shall be placed under cover. Stored materials and equipment shall be located so as to facilitate prompt inspection.

2.11.3.3 Manage, schedule and direct the Work including the activity of Subcontractors and coordinate the performance of the Work, such as to complete the Project in accordance with County's objectives of cost, timeliness and quality.

2.11.3.4 The Contractor shall not be relieved from its obligations to perform the Work in strict accordance with the Contract Documents either by the activities or duties of the County or its representatives, or by inspections, tests or approvals required or performed by persons other than the Contractor, unless such deviation shall have been approved by the County in writing.

2.11.4 **Contractor's Project Site Organization.** Maintain a competent full-time staff at the Project site to coordinate and direct the Work and the progress of the Subcontractors on the Project. Identify an on-site senior staff member (Project Manager) to represent Contractor on a daily basis with authority to negotiate change orders and contract modifications on behalf of Contractor so as not to delay the progress of the Work. The Project Manager shall represent Contractor and all communications given to the Project Manager shall be as binding as if given to Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

2.11.4.1 **Key Management Personnel.** All of Contractor's on-site management and supervisory personnel shall be approved by the County prior to assignment to the Project and shall not be removed or replaced without County's consent. The County shall have the right to direct the Contractor to remove or replace any on-site personnel whose performance becomes unsatisfactory to the County. In such event the Contractor shall promptly replace such personnel.

2.11.4.2 **Superintendence.** The Contractor shall employ a competent Project Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. It shall be the responsibility of the Project Manager and Superintendent to coordinate the work of all Trade Contractors under contract with the Contractor.

2.11.4.3 **Labor Relations.** Develop, implement and administer as necessary an effective labor relations program for the Project in order to avoid labor disputes during performance of the Contract.

2.11.4.4 The Contractor shall at all times enforce strict discipline and good order among its employees and all Subcontractors under direct or indirect contract with the Contractor and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to it.

2.11.4.5 The Contractor shall be responsible to the County for the acts and omissions of its employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a direct or indirect contract with the Contractor.

- 2.11.4.6 Review the Project Schedule with the Subcontractors and, if necessary, expand the level of detail to incorporate specific Subcontractor input consistent with the overall completion requirements.
 - 2.11.4.6.1 Provide regular monitoring and updating of the Project Schedule and various sub-networks as construction progresses. Identify potential variances between scheduled and probable milestone dates.
 - 2.11.4.6.2 Review schedule for work not started or incomplete and take appropriate measures and action to meet the scheduled milestone dates.
 - 2.11.4.6.3 Provide summary reports of each monitoring and document all changes.
 - 2.11.4.6.4 Include regular schedule updates and reporting as part of the Progress Reports required in Exhibit "E" – Drawings and Technical Specifications.
 - 2.11.4.6.5 Display the current Project Schedule in the on-site office for review at progress meetings.
- 2.11.4.7 Determine the adequacy of the Subcontractors labor force and equipment and the availability of materials and supplies to meet the Project Schedule. Take necessary corrective actions when these requirements are not being met by any Subcontractor and advise the County of same.
- 2.11.4.8 Give all notices required by and exercise best efforts to ensure that all Work is performed and constructed so that it complies with the applicable laws and ordinances, the Plans and Specifications, requirements of regulatory agencies having jurisdiction on the Project including, without limitation, the requirements of the National Fire Prevention Association (NFPA), the State Fire Marshall, and the Occupational Safety and Health Administration (OSHA), and all codes governing public buildings, without, however, assuming any of the A/E's responsibilities for design in accordance therewith. The Contractor shall be responsible for performing all Work so that it is satisfactory to the regulatory agencies required to inspect and approve the Work. It is not the responsibility of Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations unless such laws, statutes, building codes and regulations bear upon the performance of the Work by the Contractor. However, should the Contractor become aware of any conflicts, inconsistencies, or omissions in the Plans and Specifications which might result in work inconsistent

with the requirements of such regulatory agencies, the Contractor shall, at once, notify the County and request its written instruction and interpretation of the Plans and Specifications. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the County, it shall assume full responsibility therefore and shall bear all costs attributable thereto.

2.11.5 **New Material.** The Contractor represents and warrants that the goods, materials, supplies, or components offered to the County under this contract are new, not used or reconditioned, and are not of such age or so deteriorated as to impair their usefulness or safety and that the goods, materials, supplies, or components offered are current production models of the respective manufacturer.

2.11.6 The Contractor shall be responsible for obtaining, and include in their price, any/all permits and licenses necessary to perform any/all work specified. The Contractor shall act as the Owner's representative for purposes of preparing and submitting all required notifications, obtaining required permits, and paying all fees associated therein with the project.

2.11.7 When requested by the County, the Contractor shall maintain a current copy of one or all of the following documents at a particular job site:

2.11.7.1 Occupational Safety and Health Administration, Title 29, Code of Federal Regulations:

2.11.7.1.1 Section 1910.1001 - Asbestos (AHERA Regulations included).

2.11.7.1.2 Section 1910.134 - Respiratory Protection (including a copy of an approved written Respiratory Protection Plan).

2.11.7.1.3 Section 1926.58 - Safety and Health Regulations for Construction.

2.11.7.1.4 Section 1910.20 - Access to Employee Exposure and Medical Records.

2.11.7.1.5 Section 1910.1200 - Hazard Communication.

2.11.7.1.6 Section 1910 Subpart S - Electrical (with copy of SBBC approved Lock-out Tag-out procedures for electrical, mechanical, pneumatic and hydraulic systems).

2.11.7.1.7 Section 1910 Subpart D - Walking Working Surfaces.

2.11.7.1.8 Section 1926.58 - Temporary Power.

2.11.7.1.9 Environmental Protection Agency Title 40 CFR Part 61 NESHAP:

2.11.7.1.9.1 Subpart A - General Provisions.

2.11.7.1.9.2 Subpart B - National Emission Standard for Asbestos.

2.11.7.1.9.3 Subpart M- National Emission Standard for Asbestos, Asbestos Stripping Work Practices and Disposal of Asbestos Waste.

2.11.7.1.10 Florida Statutes:

2.11.7.1.10.1 Chapter 553 – Building Construction Standard.

2.11.7.1.10.2 Chapter 255 – Asbestos Management Program.

2.11.7.1.10.3 Chapter 469 – Asbestos Contractor Licensing Requirements.

2.11.8 The Contractor shall be responsible for compliance of all relevant local, State, and Federal regulations including but not limited to the above mentioned regulations. Where compliance with two or more industry standards or sets of requirements is specified, and overlapping if those different standards or requirements establishes different or conflicting levels of quality, protection or service, the most stringent requirement is intended and shall be enforced. Except to the extent that more explicit or more stringent requirements are written directly into the contract documents, applicable standards of the construction industry have the same force and effect and are made part of the contract documents.

2.11.9 **Hazardous Materials.** The Contractor shall provide medical monitoring to any of his employees or agents that may be exposed to hazardous materials or substances in excess of background levels during any phase of a project. The Contractor shall assume full responsibility and liability for compliance with all applicable federal, state, and local regulations pertaining to the protection of workers, visitors to the site, and persons occupying areas adjacent to the site. The Contractor shall hold the County of Volusia harmless for failure to comply with any applicable safety and health regulation on the part of himself, his employees, and/or his Subcontractors.

2.11.10 **Utilities.** The Contractor shall be responsible for determining the adequacy of available utilities on-site. Where utilities are not available or are inadequate at the job site, the Contractor shall provide at their own expense, all necessary temporary utilities required for the work specified.

- 2.11.11 **Demolition Activities, Asbestos.** When applicable, if the structure qualifies, the Contractor shall at least ten (10) working days prior to the start of demolition activities, submit written notification of demolition of regulated asbestos (DEP FORM 62-257.900(1)) in accordance with FAC Chapter 62-257 via certified mail to:

Florida Department of Environmental Protection
Air Program
3319 Maguire Blvd., Suite 232
Orlando, FL 32803-3767

- 2.11.11.1 The Contractor shall clean the work area at the end of each day's demolition activities. All visible debris shall be properly containerized prior to leaving the work area. The work area shall be secured after termination of the workday to prevent entry. The Contractor shall transport and dispose of asbestos waste in full compliance with 40 CFR 61, SUBPART A, 49 CFR 171 and 49 CFR 172 and disposal in a proper location including all fees related to disposal (i.e. tipping fees). The Contractor shall not be permitted to use County trash receptacles.
- 2.11.11.2 The Contractor shall be responsible for using engineering controls and work practice methods in accordance with 29 CFR 1926.
- 2.11.12 During the Project, the Contractor is responsible for security, fire safety and damage to equipment and other County property losses incurred by the Contractor and his labor force.
- 2.11.13 The County reserves the right to monitor/inspect, request work modifications, cease work or to have personnel removed from County property throughout the duration of this Contract.
- 2.11.14 The Contractor shall be responsible for the professional and technical accuracy of all services furnished by the Contractor and its Sub-Contractors under this Contract.
- 2.11.15 The Contractor shall serve as an expert witness for the County in any legal proceedings arising in connection with this Contract, if the County so requests.
- 2.12 **Representative of County.** All services authorized under this Contract shall be under the direction of the County Representative, who shall have final decision authority for all phases of the services, including general direction, review and approval of the services.
- 2.13 **Representative of Contractor.** Contractor shall, at all times during the normal work week, designate or appoint, one or more Project Managers who are authorized to act on behalf of Contractor regarding all matters involving the conduct of the performance

pursuant to this Contract and Project, and shall keep the County Project Manager continually advised of such designation.

2.14 **Continuing the Work.** The Contractor shall carry on the Work or Services and adhere to the progress schedule during all disputes of this Contract with the County. No Work or Services shall be delayed or postponed pending resolution of any disputes of this Contract, except as specifically set forth herein, or as the County and Contractor may otherwise agree in writing.

2.14.1 **Informal Dispute Resolution:** If a dispute arises between the parties concerning a Request for Information, Change Order, Field Change Orders, a unit price or quantity of any material(s), the cost of labor, or interpretation of the specifications in any Contract Document, regardless of whether or not a change in said unit price or quantity of any material(s), cost of labor, or interpretation of the specifications would result in an increase, decrease, or no change in the total Contract Price of this Contract, and the parties (i.e., Contractor's designated representative and County's designated representatives (i.e., Architect/Engineer and County Project Manager) are unable to resolve such dispute within five (5) calendar days of notice from the other party of the dispute, then within five (5) calendar days thereafter, the applicable Project Manager and Consultant for the County and Project Manager for the Contractor shall promptly bring the disputed matter to a informal mediation conference at a date, time, and location mutually agreeable to all parties. The County and Contractor shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding.

2.14.2 **Formal Dispute Resolution:** See Article 7 of this Contract.

2.14.3 Each party agrees to bear its own costs and attorney's fees relating to any dispute resolution procedures described in this section including without limitation attorney's fees and costs, and any travel or related expenses of personnel or senior management whose presence may be deemed necessary to resolve such issues, disputes or controversies.

2.15 **Deliverables.** The Contractor shall deliver to the County any and all reports and any other deliverable required under the Project in a format approved by the County.

2.16 **Time is of the Essence.** Time is of the essence for all Projects performed in accordance herewith.

2.17 **Standards.** The Contractor shall be responsible for the professional quality and the accuracy of all deliverables and services provided under this Contract and shall, without additional compensation, correct any errors in the same. Deliverables prepared by the Contractor in response to the requirements of this Contract shall, unless otherwise provided for in this Contract, be thoroughly researched for accuracy of content, be grammatically correct and not contain errors, be numerically accurate, be submitted in the format approved in advance by the County Project Manager, and be submitted for

advance review and comment by the County Project Manager. The cost of correcting errors, correcting report data, or making other revisions required to bring the deliverable into compliance with the requirements of this Contract shall be borne solely by the Contractor.

- 2.18 **Value Engineering.** The Contractor shall review the plans and specifications as prepared by the A/E and perform value engineering services. The County Representative, the A/E and the Contractor shall review the proposed changes and the County shall determine which shall be incorporated into the plans and specifications. As an optional service, the Contractor may be called upon to develop these changes into drawing formats generally compatible with the existing plans and specifications. The fee for this optional work will be determined when required.
- 2.19 **Project Site Facilities.** Review the Plans and Specifications to ensure that they contain provision for all temporary facilities required for the performance, management, inspection and supervision of the Work.

ARTICLE 3 - SCOPE OF SERVICES/WORK AND CLAIMS

- 3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described in the Contract Documents. Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to completely perform the Work and complete the Project in accordance with the Contract Documents.

The Improvements under this Contract consist of milling and resurfacing of countywide roads throughout Volusia County.

- 3.2 Changes in the Work shall made in accordance with Section 10.4.2 of the General Conditions.
- 3.3 **Claims by Contractor.** When the Contractor deems that extra compensation or a time extension is due beyond that agreed to by the County, whether due to delay, additional work, altered work, differing site conditions, breach of Contract, or for any other cause, the Contractor shall follow the procedures set forth in these Contract Documents for preservation, presentation and resolution of the claim.

Submission of timely notice of intent to file a claim, time extension request, and the certified written claim, together with full and complete claim documentation, are each a condition precedent to the Contractor bringing any court, arbitration, or other formal claims resolution proceeding against the County for the items and for the sums or time set forth in the Contractor's written claim. The failure to provide such notice of intent, time extension request, written claim and full and complete claim documentation within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim.

- 3.3.1 **Content of Written Claim.** As a condition precedent to the Contractor being entitled to additional compensation or a time extension under the Contract Documents, for any claim, the Contractor shall submit a written claim to the County which will include for each individual claim, at a minimum, the following information:

- 3.3.1.1 A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected and included in each claim;
 - 3.3.1.2 The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident;
 - 3.3.1.3 Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;
 - 3.3.1.4 Identification of the provisions of the Contract Documents which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract Documents which allegedly have been breached and the actions constituting such breach;
 - 3.3.1.5 A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:
 - 3.3.1.5.1 Documented additional job site labor expenses;
 - 3.3.1.5.2 Documented additional cost of materials and supplies;
 - 3.3.1.5.3 A list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each;
 - 3.3.1.5.4 Any other additional direct costs or damages and the documents in support thereof;
 - 3.3.1.5.5 Any additional indirect costs or damages and all documentation in support thereof.
 - 3.3.1.6 A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the number of days claimed for each identified event, circumstance or occurrence.
- 3.3.2 **Compensation for Delay.** Notwithstanding anything to the contrary contained in the Contract Documents, additional Contract Time shall be the Contractor's sole remedy for any delay other than to perform extra work caused by the County unless the delay shall have been caused by acts constituting willful or intentional interference by the County with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to the County of such interference. The parties anticipate that delays may be caused by or arise from any number of events during the performance of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental Contracts, disruptions, differing site conditions, utility conflicts, design changes or

defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the County pursuant to the Contract Documents, shop drawing approval process delays, expansion of the physical limits of the Project to make it functional, weather, weekends, holidays, special events, suspension of Contract Time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

3.3.3 **Non-Recoverable Items.** The parties agree that for any claim the County will not have liability for the following items of damages or expense:

3.3.3.1 Loss of profit, incentives or bonuses;

3.3.3.2 Any claim for other than extra work or delay;

3.3.3.3 Consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, diminution of business value, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;

3.3.3.4 Acceleration costs and expenses, except where the County has expressly and specifically directed the Contractor in writing "to accelerate at the County's expense"; nor

3.3.3.5 Attorney fees, claims preparation expenses and costs of litigation.

ARTICLE 4 - COMPENSATION; PAYMENTS; PUNCHLIST

4.1 **Compensation.** As consideration for the Contractor satisfactorily completing the Project in accordance with the terms and conditions of this Contract, the County agrees to pay the Contractor a dollar amount equal to Contractor's "Total Base Bid," FIVE MILLION THREE HUNDRED SEVENTY-SIX THOUSAND EIGHT HUNDRED FORTY-TWO DOLLARS AND 40/100 (\$5,376,842.40), plus the total actual expense incurred as direct bond premiums and costs, estimated in the line designated as "Performance and Payment Bonds," THIRTEEN THOUSAND SIX HUNDRED SEVENTEEN DOLLARS AND 00/00 (\$13,617.00), as shown in Exhibit "C" hereto. The Contract Price shall be FIVE MILLION THREE HUNDRED NINETY THOUSAND FOUR HUNDRED FIFTY-NINE DOLLARS AND 40/100 (\$5,390,459.40). Performance and Payment Bond prices are subject to adjustment based on actual premiums paid.

4.1.1 The Compensation shall not be adjusted because of errors or omissions which are not the fault of the County in computing the Project costs which result in an increase in the cost to Contractor to perform this Contract or because the time for completion varies from the original estimate, including completion or substantial completion of this Contract prior to the scheduled or Contract completion date or on account of County's election to furnish any of the Work or Services.

4.2 **Payments.** In each invoice for payment, the Contractor shall certify as follows:

4.2.1 Contractor shall deliver with the invoice, as a condition precedent to payment thereof, waivers of lien for each of its Subcontractors.

4.2.3 The County shall promptly review each invoice for payment and make such exceptions, as the County reasonably deems necessary or appropriate under the state of circumstances then prevailing.

4.2.4 Based upon the approved invoice, the County shall make payment to Contractor in the amount approved, subject, however, to the provisions of Section 4.2, herein. The payment of any invoice for payment by the County does not constitute approval or acceptance of that part of the Project to which such payment relates or relieve the Contractor of any of its obligations hereunder with respect hereto.

4.2.5 In accordance with Florida Statute § 255.078, the County shall retain ten percent (10%) of the gross amount of each monthly payment request or ten percent (10%) of the portion thereof approved by the county representative for payment until 50-percent completion of the project. After 50-percent completion of the project, retainage shall be reduced to five percent (5%) of each payment. Such sum shall be accumulated and not released to Contractor until final payment is due. Any interim interest on such sums shall accrue to the County.

4.2.6 Contractor shall submit a monthly Application for Progress Payment to the County, which may require execution of a separate or integrated Contractor's Release and Affidavit. The period covered by each Application for Progress Payment shall be one calendar month unless otherwise agreed in writing. The County shall process the Application for Progress Payment in accordance with the Local Government Prompt Payment Act; Florida Statutes §218.70-.80 and the Contract Documents.

4.2.7 The Application for Progress Payment shall be supported by documents and data as required by the County to substantiate its accuracy. The Contractor and County shall agree on a schedule of values as a basis for reviewing the Contractor's Applications for Progress Payment.

4.2.8 Subject to other provisions of the Contract Documents, the amount of each payment shall be determined by multiplying the percentage of completion of a designated portion of the Work as listed in the agreed schedule of values, by the lump sum Contract Sum allocated to that portion of the Work, less retainage, or in

the case of a unit price pay item, by multiplying the unit price per item by the number of units incorporated into the Project, less retainage. Where items are listed for payment as lump sum units and the Contract Plans do not show estimates of component quantities, the Contractor is solely responsible for his own estimates of such quantities. For those items having variable final pay quantities that are dependent on actual field conditions, use and measurement, the quantities shown in the Plans and in the proposal form are approximate and provide only a basis for calculating the bid upon which the County awarded the Contract.

- 4.2.9 Contractor shall include in its Application for Progress Payment, that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the Project site for incorporation into completed construction, less retainage.
- 4.2.10 Retainage shall be withheld in accordance with Florida Statute §218.735. Contractor may submit a payment request for all retainage withheld in accordance with §218.735(7)(e); after submission of the final invoice.
- 4.2.11 Contractor shall pay its subcontractors and suppliers in accordance with Florida Statute §218.735(6). Contractor shall require its subcontractors to pay all of the subcontractor's subcontractors in accordance with §218.735(6).
- 4.2.12 Per Florida Statute §255.05(11), the County may condition payment of a Progress Payment or Final Payment on the production of a release, waiver or like documentation from a claimant demonstrating that the claimant does not have an outstanding claim against the contractor, the surety, the payment bond, or the County for payments due on labor services or materials furnished on the project unless the Contractor provides the County with a written consent from the surety regarding the Project or payment in question. No party requiring a release from a claimant may require use of a form other than those specified in Florida Statute §255.05(2)(b-c).
- 4.2.13 Contractor shall prepare and submit an Application for Final Payment when Contractor believes in good faith that Substantial Completion of the Work has been achieved. The County shall review the application and perform a Substantial Completion inspection.
- 4.2.14 Within ten (10) days of certification of Substantial Completion, the County shall provide Contractor a preliminary list of items required to render the Work complete, satisfactory and acceptable to the County. The Contractor shall provide any comments, including Contractors estimated time to complete all items on the list, to the County in writing within five (5) days of receipt of the preliminary list from the County. The County shall review the Contractors written comments and deliver to Contractor a final list of items within five (5) days of receipt of Contractor's comments. Contractor shall perform all items on the final list within thirty (30) days of receipt from the County unless otherwise agreed in writing by the County.

- 4.2.15 Contractor shall notify the County and the Project Manager that the Project is ready for Final Inspection upon completion of all items on the final list. The County will then schedule the Final Inspection, in coordination with the Contractor. The Final Inspection shall be conducted by the County, within ten (10) days of the Contractor's notification to the County. Following the Final Inspection, the County shall provide the Contractor a list of any additional items for corrective action and conduct an additional inspection, if necessary, to ensure that the Work has been completed.
- 4.2.16 The County reserves the right, if it discovers an error in the partial or final quantity estimates used for payments, or if it discovers that the Contractor performed defective Work or used defective materials, after the Final Payment has been made, to claim and recover from the Contractor or his surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the Work and materials.
- 4.2.17 Contractor shall retain all records pertaining to the Project for a period of three years from the date of the County's final acceptance of the Project. Upon request, Contractor shall make all such records available to the County or its representative. For the purpose of this Article, records include all books of account, supporting documents, and papers that the County deems necessary to ensure compliance with the Contract.
- 4.2.18 Any provisions hereof, to the contrary notwithstanding, the County shall not be obligated to make current payment to the Contractor hereunder if any one of the following conditions exists:
- 4.2.18.1 The Contractor fails to diligently prosecute the work in an efficient, timely, and workmanlike manner and in strict accordance with the provisions of the Contract Documents; or
 - 4.2.18.2 The Contractor fails to use an adequate number of qualified personnel and sufficient equipment to complete the Project without undue delay; or
 - 4.2.18.3 The Contractor fails to make prompt payments to its Subcontractors, suppliers, materialmen, or laborers; or
 - 4.2.18.4 The Contractor is otherwise in default of any of its obligations hereunder or otherwise is in default under any of its contractual requirements; or
 - 4.2.18.5 The Contractor failed to provide a certified letter of the proper removal of lead and/or asbestos; or
 - 4.2.18.6 Any discrepancies between the County's records and the Contractor's submittals must be rectified, to County's satisfaction, by the Contractor before the County makes payment on those items. The Contractor shall

only issue invoices for services rendered. Pursuant to Chapter 218, Florida Statutes, the County will pay interest not to exceed one percent (1%) per month on all undisputed invoices not paid within twenty (20) days after receipt and acceptance of the service, and receipt by the County of a properly completed invoice, whichever is later. Invoices for payments hereunder shall be submitted to the Project Manager.

4.2.18.7 To be deemed proper, all invoices shall comply with the requirements set forth in this Contract and shall be submitted on the form and pursuant to instructions prescribed by the County.

4.3 **Cost of the Work.** The Cost of the Work shall include, without limitation, the cost items set forth as follows:

4.3.1 The cost of all materials, supplies and equipment incorporated in the Work and the cost of transportation and storage thereof. The County, at its sole discretion, may make payment for materials, supplies or equipment stored off-site;

4.3.2 Payments made by the Contractor to its Subcontractors for work performed for the Project under trade or subcontract contracts;

4.3.3 The cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers, which are used and consumed in the performance of the Work and the cost, less salvage value, on items used but not consumed which remain the property of the Contractor. This cost shall not include the cost of materials, supplies, equipment, temporary facilities and hand tools furnished by Subcontractors as part of their trade work which shall be incorporated in the trade contracts cost;

4.3.4 Rental charges of all necessary motor vehicles, machinery and equipment, including hand tools, whether rented from the Contractor or others, and including transportation and delivery costs, installation, maintenance, repair and replacement, and dismantling and removal, at rental charges consistent with those prevailing in the area of the Project;

4.3.5 Actual cost, without mark-up, of the premium for all insurance and bonds which the Contractor is required to provide pursuant to this Contract;

4.3.6 Sales, use, gross receipt, or similar taxes related to the performance of the Work, imposed by any governmental authority and for which the Contractor is liable;

4.3.7 Building and operating permit fees, inspection and filing fees, sewer and water fees and deposits lost for causes other than Contractor's own negligence;

4.3.8 Losses, expenses or damages to the extent not compensated by insurance or otherwise, including settlement made with the written approval of the County;

- 4.3.9 The cost of corrective work (within the Contract Price limit);
- 4.3.10 Minor expenses such as telegrams, long-distance telephone calls, telephone service at the Project site, postage, office supplies, and similar items;
- 4.3.11 Cost of debris and trash removal including daily cleanup;
- 4.3.12 Cost of final cleanup prior to occupancy including window washing, dusting of all surfaces, carpet cleaning and vacuuming, floor polishing, fixture cleaning etc.;
- 4.3.13 Cost related to emergencies affecting the safety of persons and loss of property;
- 4.3.14 Legal costs properly resulting from prosecution of the Work for the County, provided that they are not the result of Contractor's own negligence or malfeasance. Legal costs incurred in connection with disputes with the County shall not be included in the Cost of the Work;
- 4.3.15 Cost of items related to the Project Safety Program including barricades, firefighting equipment and extinguishers, special and protective wearing apparel and safety equipment, temporary roads and parking, dust and noise control, installation and operation of temporary hoists, scaffolds, ladders and runways, and likely items;
- 4.3.16 Cost of watchmen or similar security services;
- 4.3.17 Cost of survey, measurement and layout work required for the proper execution of the Work;
- 4.3.18 Cost of purchase or rental of office equipment such as typewriters, cameras, radio communications, computers, pagers, copiers, dictating units, and other items such as office and tool trailers, vehicles and furniture purchased by Contractor in connection with the Work;
- 4.3.19 Cost of preparation of shop drawings, coordination drawings, photographs, and "as-built" documentation;
- 4.3.20 Cost of data processing, computerized scheduling and document reproduction services required in the performance of the Work; and
- 4.3.21 Costs incurred during the warranty period after completion of the Project (within the Contract Price).
- 4.3.22 Overhead and any other costs incurred by the Contractor in the performance of the Contract; and,

- 4.4 Adjustments of the Compensation shall be made only as follows:
- 4.4.1 For approved changes in the Work (additional), an increase to the fee in an equitable amount to be included in the Change Order.
- 4.4.2 If the Contractor is placed in charge of the reconstruction of any insured or uninsured loss, the fee shall be increased in the same proportion pursuant to Sections 2.8 – Change in Scope of Services/Work, and 4.4.1, above.
- 4.5 The Compensation shall include only those taxes which are legally enacted at the time the Compensation is established. Taxes included in the Compensation shall be segregated by category of taxes so that the County may insure that the tax exemptions applicable to County are excluded from the Compensation.
- 4.6 The value included in the Compensation for General Conditions and supervision shall be defined as a fixed amount and agreed upon by the County and the Contractor at the time the Compensation is accepted by the County. The County and the Contractor further agree that the provisions of Section 4.1, hereof, in reference to the Compensation line item budgeted amount adjustment affecting the Compensation, as applicable to the General Conditions and supervision total amount, shall be limited and shall not exceed the agreed fixed amount by more than a maximum of ten percent (10%), if absolutely necessary. All cost savings, if any, shall be returned to the County as part of the net aggregate savings established at the time the final accounting is submitted, at the completion of the Work.
- 4.7 **Exclusions.** The Compensation shall not include such Project expenses as cost of site, site survey and subsurface investigations, professional design fees, inspection services or moveable equipment and furnishings.

ARTICLE 5 - PERSONNEL OF CONTRACTOR AND SUBCONTRACTORS

- 5.1 **Supervision.** The Contractor shall direct and supervise competent and qualified personnel and shall devote time and attention to the direction of the operation to insure performance of obligations and duties as set forth herein. The Contractor shall hire, compensate, supervise, and terminate members of its work force, and the Contractor shall direct and control the manner in which work is performed including conditions under which individuals will be assigned duties, how individuals will report, and the hours individuals will perform. The Contractor shall be responsible for all income tax, social security and Medicare taxes, federal unemployment taxes, and any other withholdings from the company's employees' and/or Subcontractor's wages or salaries. Benefits, if any, for the Contractor's employees and/or Subcontractors shall be the responsibility of the Contractor including, but not limited to, health and life insurance, retirement, liability/risk coverage, and workers' and unemployment compensation.

- 5.2 **Applicable Laws.** Contractor shall be responsible for ensuring that its employees, agents, and Subcontractors comply with all applicable laws and regulations and meet all federal, state, and local requirements related to their employment and position.
- 5.3 **Right of Rejection.** During the term of this Contract, the County shall have the right of reasonable rejection and approval of the staff of the Contractor or other representatives assigned to the work by the Contractor. If the County reasonably rejects the staff or representative of the Contractor, Contractor shall provide replacement satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's employees or others working on behalf of the Contractor are the sole responsibility of the Contractor.
- 5.4 **Prior Approval.** In the event the Contractor, during the course of the work under this Contract, requires the services of any Subcontractors, suppliers, other persons or organizations in connection with service covered by this Contract, the Contractor must secure the prior written approval of the County. The County's acceptance of any such Subcontractors, suppliers, other persons or organization so identified, may be revoked on the basis of reasonable objection after due investigation, in which case the Contractor shall submit an acceptable substitute. No acceptance by the County of any such Subcontractor, supplier, other person or organization shall constitute a waiver of any right of the County to reject defective work. Contractor shall remain fully responsible for the services of said Subcontractors, suppliers, other persons or organizations. The Contractor shall require all Subcontractors or outside associates employed in connection with the performance Work under this Contract to comply fully with the terms and conditions of Sections 3, 10, and 11, of this Contract.
- 5.5 **Contractor's Payment of Subcontractors.** Contractor shall save and hold the County harmless from any and all claims or actions by Contractor's Subcontractors, Sub-subcontractors for payment of monies such Subcontractor or Sub-subcontractor claims to be owed by Contractor by Subcontractor for Work performed under this Contract.
- 5.5.1 Contractor shall pay its subcontractors and suppliers in accordance with Florida Statute §218.735(6). Contractor shall require its subcontractors to pay all of the subcontractor's subcontractors in accordance with §218.735(6).
- 5.6 Nothing in this Contract shall create any obligation on the part of the County to pay directly to any Subcontractor of Contractor or Sub-subcontractor of Subcontractor any monies due to such Subcontractor, or claims of a Subcontractor or Sub-subcontractor of Subcontractor for amounts owed by Contractor to Subcontractor for Work performed under this Contract.

ARTICLE 6 - INSURANCE AND BONDS

- 6.1 Insurance requirements (see Exhibit "C").
- 6.2 The provisions of this Article shall survive the cancellation or termination of the Contract to the extent required to maintain coverage for losses arising out of performance of the

Work by Contractor, its employees, agents and all persons or entities performing any portion of the Work via direct or indirect contract with the Contractor.

- 6.3 In the event Change Orders exceed the estimated Contract Price, Contractor shall be required to obtain additional insurance to meet the new Contract Price.
- 6.4 Prior to commencing Work, Contractor shall execute and record in the public records of Volusia County, a payment and performance bond with a surety insurer authorized to do business in Florida as surety. The bond(s) shall be in the form of those attached in Exhibit D hereto and shall in all respects be governed by Florida Statute §255.05 and the provisions of the Contract Documents.
- 6.5 The provisions of this article shall survive the cancellation, termination or expiration of the Contract to the extent necessary to provide required coverage for the Contractor's performance of the Work.

ARTICLE 7 - DISPUTE RESOLUTION

- 7.1 The parties to this Contract shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Contract in accordance with the provisions set forth in this Section. The Contractor and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Contract and any applicable Scope of Services/Work. Issues shall be escalated to successive management levels as needed.
- 7.2 Contractor and County shall not allow any dispute to adversely affect the progress of the Work unless continuing the Work would likely result in dangerous conditions on the Project, danger to the public, or reasonably certain irreparable financial harm.
- 7.3 Contractor and County agree that all contractual provisions with respect to making claims, providing notice of default and opportunity to cure or termination, must be performed unless mutually waived in writing, as a condition precedent to initiating any dispute resolution process.
- 7.4 If a dispute develops between the parties concerning any provision of this Contract, or the interpretation thereof, or any conduct by the other party under these Contracts, and the parties are unable to resolve such dispute within ten (10) days, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project Manager or designated representative, as the case may be, of the other party in writing ("Dispute Notice") in order to resolve such dispute.
- 7.5 Upon issuance of a Dispute Notice, the Project Managers or designated representative shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate

in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative within ten (10) business days, the Project Managers shall escalate the dispute as indicated below.

Business Days	Contractor's Representative	County Representative
10	Contractor	Project Manager
10	Contractor's Local Officer	Director of Purchasing & Contracts
20	Contractor's COO or President	Deputy County Manager

7.6 **Formal Dispute Resolution.** At any point after issuance of a Dispute Notice under this section, either party may initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation, in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction pursuant to this Contract.

7.7 Each party agrees to bear its own costs and attorney's fees relating to any dispute resolution procedures described in this section including without limitation attorney's fees and costs, and any travel or related expenses of personnel or senior management whose presence may be necessary to resolve such issues, disputes or controversies.

7.8 **Mediation.** Contractor and County shall engage in non-binding mediation as a condition precedent to the initiation of litigation. The parties shall select a mutually agreeable Florida Supreme Court Certified Circuit Civil Mediator experienced and knowledgeable in construction law and/or large construction projects, within thirty (30) days of a request for mediation from the other party. The mediation shall occur at a mutually agreeable time, but not more than one-hundred twenty (120) days after the selection of a mediator, unless otherwise agreed in writing. The Florida Statutes and Florida Rules of Civil Procedure applicable to mediation shall apply. Notwithstanding the foregoing, Contractor and County agree that if they agree on a compromise and settlement, it would necessarily have to be presented in good faith to the entire county council at open meeting before it could be finalized, and such public presentation shall not be considered a breach of the confidentiality requirements of mediation. Each party shall bear their own costs and attorneys' fees. The mediation shall occur in Volusia County unless otherwise mutually agreed in writing. Any Contract reached at mediation shall be enforceable in a court of competent jurisdiction.

7.9 **Litigation.** For any claim subject to, but not resolved by mediation, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction. Florida law shall prevail in any litigation. Venue shall lie exclusively in the Seventh Judicial Circuit in and for Volusia County, Florida, for state court actions, and in the Orlando Division of the

Middle District of Florida for federal court actions. Parties shall bear their own costs and attorney's fees related to any litigation and appeals.

- 7.10 In the event of a claim by County against the Contractor, the County may, but is not obligated to, notify the Surety of the nature and amount of the claim. If the claim relates to a possibility of a Contractor's default, the County may, but is not obligated to, notify the surety and request the surety's assistance in resolving the dispute.

ARTICLE 8 - TERMINATION AND SUSPENSION

- 8.1 The performance of Services under this Contract may be terminated by the County in accordance with this Article 8 – Termination and Suspension, in whole or in part from time to time, for (1) a material breach subject to Article 7 - Dispute Resolution; (2) nonappropriation of funds; or, (3) for convenience (upon at least thirty (30) calendar days, prior written notice to Contractor) whenever the County shall determine that such termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of Work under this Contract is terminated, and the subsequent date upon which such termination becomes effective.
- 8.2 After receipt of a Notice of Termination, and except as otherwise directed by the County, the Contractor shall:
- 8.2.1 Stop work under this Contract on the date and to the extent specified in the Notice of Termination.
 - 8.2.2 Place no further orders or subcontracts for materials, Services or Work or facilities, except as may be necessary for completion of such portion of the Work under this Contract, as it is not terminated.
 - 8.2.3 Terminate all orders and subcontracts pursuant to this Article 8 – Termination and Suspension to the extent that they relate to the performance of Services or Work terminated by the Notice of Termination.
 - 8.2.4 Assign to the County, in the manner, at the times and to the extent directed by the County, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the County shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - 8.2.5 With the approval of the County and to the extent required by the County, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts. County's approval of such settlements shall be final for all the purposes of Article 8 – Termination and Suspension.

8.2.6 Transfer title and deliver to the County, in the manner, at the times, and to the extent, if any, directed by the County:

8.2.6.1 The designs, specifications, reports, studies, plans, bulletins, schedules, estimates, other documentation and/or other Work-in-process, completed Work or Services, supplies, and other materials produced as a part of, or acquired in connection with the performance of the Work or Services terminated by the Notice of Termination; and,

8.2.6.2 The completed or partially completed designs, specifications, reports, studies, plans, bulletins, schedules, estimates or other documentation which, if this Contract has been completed, would have been required to be furnished to the County.

8.2.7 Complete performance of such part of the Work or Services as shall not have been terminated by the Notice of Termination.

8.3 **Termination by the Contractor.**

8.3.1 The Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive days through no act of fault of the Contractor or its agents or employees or any other persons or entities performing portions of the Work in direct or indirect contract with the Contractor for the following reasons:

8.3.1.1 Issuance of an order of court or other government entity with jurisdiction over the Project requiring a stoppage of Work; or

8.3.1.2 Failure of the County to certify an application for payment without cause in accordance with the provisions of this Contract and Florida Statutes

8.3.2 The Contractor may terminate the Contract if, through no act of fault of the Contractor or its agents or employees or any other persons or entities performing portions of the Work in direct or indirect contract with the Contractor, the County causes repeated suspensions, delays or other interruptions which cause total cessation of performance of the Work by Contractor for more than 150 days in a 365 day period.

8.3.3 If one of the conditions in Sections 8.3.1.1 or 8.3.1.2, above exist, Contractor may give County thirty (30) days written notice to the County, terminate the Contract and Contractor shall be entitled to payment from the County for all Work actually performed, and costs directly incurred by reason of the termination. Upon failure of the Contractor to submit its termination claim within the time allowed, the County may determine on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

8.4 Termination by County for Cause.

- 8.4.1 The County may terminate the Contract if the Contractor:
- 8.4.1.1 Repeatedly refuses or fails to provide adequate manpower, equipment or proper materials to perform the Work on schedule;
 - 8.4.1.2 Fails to make payment to Subcontractors for labor or materials in accordance with Florida Statutes or the terms of the subcontract Contracts;
 - 8.4.1.3 Repeatedly fails to abide by applicable laws, statutes, ordinances, codes, rules, regulations, or orders of a government entity having jurisdiction over the Project;
 - 8.4.1.4 Fails to perform the Work in a manner that meets or exceeds the industry standard for a similarly situated Contractor on a Project of this type;
 - 8.4.1.5 Failures to cure a substantial and material breach of the Contract provisions;
 - 8.4.1.6 Is adjudged as bankrupt or insolvent, or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for Contractor or for any of its property, or if it files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
 - 8.4.1.7 Fails to follow the instructions of the County or County's representative or otherwise violates any material provision(s) of the Contract Documents, which if uncured in a timely manner could cause damages to the County.
- 8.4.2 If County determines a condition described in Section 8.4.1 exists, County may, without prejudice to other rights or remedies and upon giving notice to the Surety, terminate the Contractor upon ten (10) days written notice and may, subject to the prior rights of Surety, if any:
- 8.4.2.1 Exclude the Contractor from the Project and take possession of all materials, equipment tools and construction equipment and machinery thereon owned by the Contractor;
 - 8.4.2.2 Accept assignment of subcontracts; and
 - 8.4.2.3 Withhold any further payment from Contractor until the Work is complete;

8.4.2.4 Finish the Work by whatever commercially reasonable method the County chooses. County shall maintain a detailed accounting of the costs incurred by the County to finish the Work.

8.4.3 If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including County's cost of compensation to the CEI (if any) and other direct costs made necessary thereby, and other damages incurred by the County not expressly waived, the difference shall be paid to the Contractor. If such costs to the County exceed the unpaid Contract Sum, the Contractor shall pay the difference to the County.

8.5 **Termination for Cause – Breach.**

8.5.1 Subject to completion of the dispute resolution procedures set forth in Article 7 - Dispute Resolution, either party may, at its option, terminate this Contract in the event of a material breach of the other party by providing the breaching party thirty (30) days' prior written notice of termination delivered in accordance with Section 11.2 - Notice hereof, which notice shall identify and describe with specificity the basis for such termination. If, prior to the expiration of the notice period, the breaching party either:

8.5.1.1 Cures the noticed breach as evidenced by written confirmation of the cure delivered by the non-breaching party in accordance with Section 11.2 – Notice and non-breaching party accepts cure; or

8.5.1.2 Submits to the non-breaching party a plan satisfactory to the non-breaching party to cure the noticed breach and cures the breach to the satisfaction of the non-breaching party within the time period agreed upon in the plan as evidenced by written confirmation of the cure delivered by the non-breaching party in accordance with Section 11.2 – Notice hereof within the period contained in such plan to cure, then this Contract shall not be terminated for the noticed breach.

8.5.2 In the event the breaching party fails to cure the noticed breach within the time period set forth in this Article 9 - Term and Termination, this Contract may be terminated at the end of the 30 day cure period (or longer time period for cure if agreed in writing by the parties) and the non-breaching party can sue the breaching party for damages and/or specific performance under this Contract and seek such other remedies as may be available under Florida law.

8.5.3 In the event Contractor fails to cure a noticed breach within the time period set forth in Section 8.5 and County terminates this Contract, in addition to the remedy described in Section 8.5, the County shall have the unfettered right to solicit, re-solicit and/or to contract for goods, Work or Services from any contractor, including Contractor's Subcontractors or Sub-subcontractors, to complete the Project.

8.6 **Termination for Non-appropriation.**

- 8.6.1 Notwithstanding any other term or provision of this Contract, the continuation of this Contract beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. Termination by the County due to nonappropriation shall be without a termination charge by Consultant. County shall not be obligated to pay Contractor under this Contract beyond the date of termination except as set forth in this Contract. County's obligation to pay Contractor is limited to the budgeted amount for a fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract and is otherwise limited to legally available non-ad valorem tax revenues.
- 8.6.2 Any such termination shall be effected by the delivery of Notice of Termination in accordance with Section 11.2 – Notice. A Notice of Termination shall specify the extent to which this Contract is terminated and the date upon which termination will become effective.
- 8.6.3 In the event that this Contract is terminated in whole for nonappropriation by the County or Contractor and subject to Article 4 – Compensation; Payments; Punchlist, and Article 8 – Termination and Suspension, Contractor shall be paid in accordance with terms of this Article to the date of termination on a prorated basis for any milestone or Deliverable designated for payment under this Contract that was started but not completed. Notwithstanding the foregoing, County's obligation to pay Contractor under Article 4 – Compensation; Payments; Punchlist and this Contract is limited to the budgeted amount for the fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract and is otherwise limited to legally available non-ad valorem tax revenues. Contractor shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation set forth in Article 4 – Compensation; Payments; Punchlist. Upon being notified of County's election to terminate or Contractor election to terminate, Contractor and its Subcontractors shall refrain from performing further work or incurring additional expenses under the terms of this Contract which is not specifically authorized in the Notice of Termination.
- 8.6.4 Upon being notified of County's election to terminate for default of Contractor, non-appropriation or convenience, Contractor and its Subcontractors shall refrain from performing further work or incurring additional expenses under the terms of the resulting Contract which is not specifically authorized in the notice of termination.
- 8.6.5 If termination of the resulting Contract occurs for any reason:
- 8.6.5.1 Except as otherwise provided in the resulting Contract, Contractor shall return to the County, or destroy, all County confidential information in Contractor's possession and shall certify the destruction or return of said information in a written document signed by the duly authorized representative of the Contractor that all such information has been

destroyed or returned, provided that Contractor shall be permitted to retain an archival copy of any such confidential information (provided it continues to maintain the confidentiality of such as prescribed herein) to the extent necessary to have a record of the service performed hereunder.

8.6.5.2 For all undisputed outstanding invoices submitted to the County for work completed or deliverables delivered prior to the effective date of the termination, the County shall cause payments to be made to Contractor within thirty (30) days of receipt of invoice. Contractor shall invoice the County for any sums Contractor claims to be owed by County under the resulting Contract for work performed from the last invoice to the effective date of termination. County shall review such invoice for payment within fifteen (15) days of receipt and County shall pay any undisputed amount within thirty (30) days, subject to the Article entitled Compensation in the resulting Contract. Any disputed amounts on any invoices shall be subject to the dispute resolution process set forth in the Article entitled Dispute Resolution in the resulting Contract.

8.6.6 In the event of termination by the County for nonappropriation, for all items or products ordered by Contractor before receipt by Contractor of the Notice of Termination which Contractor could not cancel without imposition of a fee, the County shall cause payments to be made to Contractor within thirty (30) days of receipt of an undisputed invoice for all cancellation, restocking or residual fees resulting from the cancellation or return of third party products ordered from or shipped by the vendor thereof prior to the effective date of the termination.

8.7 **Suspension by County for Convenience.**

8.7.1 The County may order the Contractor in writing to suspend, delay or interrupt a portion or all of the Work, without cause.

8.7.2 The Contract Time and Contract Sum may be adjusted on account of any suspension, delay or interruption pursuant to Section 8.7, in accordance with the Contract Documents, but no adjustment shall be required if:

8.7.2.1 And to the extent the performance is or would have been suspended by another cause for which the Contractor or those in direct or indirect contract with the Contractor are responsible; or

8.7.2.2 And to the extent that an equitable adjustment is made or denied under another provision of the Contract Documents accounting for the suspension.

8.8 **Termination by the County for Convenience.**

8.8.1 The County may terminate the Contract for convenience without cause upon thirty (30) days written notice to Contractor. Upon written notice from the County, the Contractor shall:

8.8.1.1 Cease operations as directed by the County in the notice;

8.8.1.2 Protect and preserve the Work in place and stored materials; and

8.8.1.3 Assign subcontracts and purchase orders as directed by the County;

8.8.1.4 Except as otherwise directed by the County, terminate all subcontracts and purchase orders effective on the termination date provided in the notice of termination and cease entering any new subcontracts or purchase orders.

8.8.2 If termination of this Contract occurs for any reason:

8.8.2.1 Except as otherwise provided in this Contract, Contractor shall return to the County all County Confidential Information in Contractor's possession and shall certify in a written document signed by the Contractor and County Representative or any Amendment thereto then, in accordance with Section 11.2 - Notice that all such information has been returned.

8.8.2.2 Except as provided in herein, the County shall return to Contractor or destroy all Contractor Confidential Information in the County's possession (including, without limitation, all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment or other documents or property relating to such Contractor Confidential Information and all copies of any of the foregoing (in whatever medium recorded) and all third-party products in its possession not yet accepted and not yet paid for in full together with all copies of documentation and other material related thereto, and shall certify in a written document signed by the County Project Manager and Contractor or any amendment thereto that all such information and material has been returned or destroyed.

8.8.2.3 For all undisputed outstanding invoices submitted to the County prior to the effective date of the termination and subject to Article 4 – Compensation; Payments; Punchlist, and this Article 8 – Termination and Suspension, the County shall cause payments to be made to Contractor within thirty (30) days of receipt of invoice. Contractor shall invoice the County for any sums Contractor claims to be owed by County under this Contract for work performed from the last invoice to the effective date of termination. County will review such invoice for payment within fifteen (15) days of receipt and County will pay any undisputed amount within thirty (30) days, subject to.

- 8.9 If the Contractor's failure to perform and default arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor (such causes may include, but are not restricted to acts of God, acts of the public enemy, acts of the County in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor and the Contractor, within ten (10) days from the beginning of any such delay notifies the County in writing of the causes of delay, then the County, in its sole discretion, shall ascertain the facts and the extent of delay and extend the time for completing the Project when the findings of fact justify such an extension.
- 8.10 If, after Notice of Termination of this Contract for default, it is determined for any reason that the Contractor was not in default or that the default was excusable under the provisions of paragraph above, the rights and obligations of the parties shall be the same as if the Notice of Termination had not been issued pursuant to this Article 9 – Term and Termination.
- 8.11 Any provision of this Contract that imposes or contemplates continuing obligations on a party, will survive the expiration or termination of this Contract.
- 8.12 If County terminates pursuant to Section 8.7, Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, plus commercially reasonable overhead and profit on the Work not executed.

ARTICLE 9 - LIMITATION OF LIABILITY

- 9.1 **Sovereign Immunity.** The County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with section 768.28, Florida Statutes (as amended). Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the County beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature and the cap on the amount and liability of the County for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.
- 9.2 **No Third Party Beneficiaries.** Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.
- 9.3 **Indemnification.**
- 9.3.1 The Contractor shall indemnify and hold harmless the County, including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, and volunteers from and against all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the

negligence, recklessness, or intentional wrongful misconduct of the Contractor or its subcontractors, agents, employees, or any persons employed or utilized by the Contractor in the performance of the Contractor's obligations under this Contract.

- 9.3.2 In all claims against County, including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status, and any employee of Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be held legally liable, no indemnification obligation shall be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor, or any contractor, subcontractor or sub-subcontractor thereof under Florida's Workers' Compensation acts, disability benefit acts, or other employee benefit acts.
- 9.3.3 Contractor's obligations or services shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity or insurance defense of additional or named insureds which would otherwise exhaust or be unavailable as to a party or person described in this Contract.
- 9.3.4 The indemnification requirements stated in subsection 9.3.1 and 9.3.2 herein shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the County's sovereign immunity.
- 9.4 In no event shall Contractor or County be liable for consequential, special, incidental, indirect, exemplary, or punitive damages.
- 9.5 **Claims Notice.** The Contractor shall timely report in writing to the County's Director of Risk Management any incident which it believes might result in claims against the County under any of the coverages mentioned herein.

Name: County of Volusia, Florida
Personnel/Risk Management Division
Address: 230 North Woodland Boulevard, Suite 250
DeLand, Florida 32720
Telephone: 386-736-5963
Fax: 386-822-5006

ARTICLE 10 - GOVERNMENT COMPLIANCE

- 10.1 **Employment of Illegal Aliens.** The Contractor certifies that it does not and will not, during the performance of the Contract, employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986 (as amended).
- 10.2 **Nondiscrimination and Americans with Disabilities Act.** Contractor shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Contract. Contractor

agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any Services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In performing under this Contract, Contractor agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for work under this Contract because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.

10.2.1 In accordance with the American Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing a special accommodation to participate in the proceedings, or an interpreter to participate in any proceedings, should contact the county's ADA Coordinator at 386-248-1760 for assistance, at least two business days before any meeting date. Assisted listening system receivers are available for the hearing impaired, and can be obtained from the Deputy Clerk by contacting the county's ADA Coordinator at 386-248-1760. Read the full ADA Notice under The American with Disabilities Act (Title II). Read the County of Volusia Grievance Procedure under The Americans with Disabilities Act (Title II).

- 10.3 **Fair Labor Standards Act.** The Contractor and any Subcontractor shall pay all employees working on this Contract, not less than the minimum wage specified in the Fair Labor Standards Act (as amended).
- 10.4 **Drug-Free and Smoke-Free Workplace.** The County of Volusia is a drug-free and smoke-free workplace. Contractor agrees that its personnel and the personnel of each of its Subcontractors agree to adhere to the County's policies on drug-free and smoke-free work place during the term of this Contract.
- 10.5 **Modifications Due To Public Welfare or Change in Law.** The County shall have the power to make changes in this Contract as the result of changes in law and/or ordinances of Volusia County to impose new rules and regulations on Contractor under this Contract relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare. The County shall give Contractor notice of any proposed change and an opportunity to be heard concerning those matters. In the event any future change in Federal, State or County law or the ordinances of Volusia County materially alters the obligations of Contractor, or the benefits to the County, then this Contract shall be amended consistent therewith. Nothing contained in this Contract shall require any party to perform any act or function contrary to law. The County and Contractor agree to enter into good faith negotiations regarding modifications to this Contract, which may be required in order to implement changes in the interest of the public welfare or due to change in law.

10.6 **Compliance with Laws.**

10.6.1 The Contractor shall be responsible to know and to apply all applicable federal and state laws, all local laws, ordinances, rules, regulations, and all orders and decrees of bodies having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Contractor shall always observe and comply with all such laws, ordinances, rules, regulations, orders and decrees whether or not they are specifically included or referenced by name in the Contract Documents.

10.6.2 All licenses and permits required to perform Contractor's duties under this contract whether such license or permit is required by the federal government, State of Florida, Volusia County, or any municipality, shall be at Contractor's sole cost and expense, and shall not be a cost of the County. All required licenses and permits shall be maintained in full force and effect during the term of this contract.

10.7 **Truth-In-Negotiation Certificate.** The signature on this Contract by Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual Unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of Contracting.

10.8 **Public Records Law.** Pursuant to section 119.0701(2)(a), Florida Statutes, the County is required to provide Contractor with this statement:

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 AT: 386-736-5935, purchasing@volusia.org, by mail at 123 W. Indiana Ave., RM 302 DeLand, FL 32720.

By entering into this Contract, Contractor acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Contract are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any Contractor entering into a contract for services with the County is required to:

10.8.1 Keep and maintain public records required by the County to perform the services and work provided pursuant to this Contract.

10.8.2 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.

- 10.8.3 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 Contractor does not transfer the records to the County.
- 10.8.4 Upon completion of the Contract, transfer, at no cost, to the County all public records in the 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 public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.
- 10.8.5 Requests to inspect or copy public records relating to the County's Contract for services must be made directly to the County. If Contractor receives any such request, Contractor shall instruct the requestor to contact the County. If the County does not possess the records requested, the County shall immediately notify the Contractor of such request, and the Contractor must provide the records to the County or otherwise allow the records to be inspected or copied within a reasonable time.
- 10.8.6 Contractor acknowledges that failure to provide the public records to the County within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.
- 10.8.7 Contractor further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the County.

Contractor shall indemnify, defend, and hold the County harmless from and against any and all claims, damage awards, and causes of action arising from the Contractor's failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorney's fees and costs arising therefrom. Contractor authorizes County to seek declaratory, injunctive, or other appropriate relief against Contractor from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

- 10.9 **Audit Right and Retention of Records**. Contractor agrees to maintain such financial records and other records as may be prescribed by the County or by applicable federal and state laws, rules, and regulations. County shall have the right to audit the books, records, and accounts of Contractor that are directly related to this Contract. Contractor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Contract. Contractor shall preserve and make

available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for the required retention period of the Public Records Act (if applicable, or, if the Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Public Records Act is determined by County to be applicable to Contractor' records, Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry.

10.10 **Payments Subject to Appropriation.** Notwithstanding any other term or provision of this Contract, the continuation of this Contract beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes.

10.11 **Prohibition Against Contingent Fees.**

10.11.1 The Contractor warrants that he or she or it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Contract and that he or she or it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor any fee, commission, compensation, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, the County shall have the right to terminate this Contract without liability and, at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

10.11.2 Contractor understands any acknowledges that any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for the Contractor, who offers, agrees, or contracts to solicit or secure County contracts for services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of a contract for services shall, upon conviction in a competent court of this State, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes (as amended).

10.11.3 Any County official, agent or employee who offers to solicit or secure, or solicits or secures, a contract for services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such a contract for professional services between the County and any individual

person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

10.12 **Public Entity Crime and Discriminatory Vendor List.** Pursuant to Florida Statutory requirements, Contractor is hereby notified of the contents of the following statutory provision:

10.12.1 **Section 287.133(2)(a)(as amended):** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Contractor, supplier, Subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

10.12.2 **Section 287.133(2)(b)(as amended):** A public entity may not accept any bid, proposal, or reply from, award any contract to, or transact any business in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO with any person or affiliate on the convicted vendor list for a period of 36 months following the date that person or affiliate was placed on the convicted vendor list unless that person or affiliate has been removed from the list pursuant to paragraph (3)(f). A public entity that was transacting business with a person at the time of the commission of a public entity crime resulting in that person being placed on the convicted vendor list may not accept any bid, proposal, or reply from, award any contract to, or transact any business with any other person who is under the same, or substantially the same, control as the person whose name appears on the convicted vendor list so long as that person's name appears on the convicted vendor list.

10.12.3 **Section 287.134(2)(a)(as amended):** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Contractor, supplier, Subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

10.12.4 **Section 287.134(2)(b)(as amended):** A public entity may not accept any bid, proposals, or replies from, award any contract to, or transact any business with any entity or affiliate on the discriminatory vendor list for a period of 36 months

following the date that entity or affiliate was placed on the discriminatory vendor list unless that entity or affiliate has been removed from the list pursuant to paragraph (3)(f). A public entity that was transacting business with an entity at the time of the discrimination resulting in that entity being placed on the discriminatory vendor list may not accept any bid, proposal, or reply from, award any contract to, or transact any business with any other entity who is under the same, or substantially the same, control as the entity whose name appears on the discriminatory vendor list so long as that entity's name appears on the discriminatory vendor list.

- 10.13 By signing this Contract, the Contractor represents and warrants that it is not violating Section 287.133, Florida Statutes, or Section 287.134, Florida Statutes.
- 10.14 In addition to the foregoing, the Contractor represents and warrants that Contractor is not under investigation for violation of such statutes and should Contractor prepare to use a Subcontractor or professional associate, Contractor shall require such Subcontractor or professional associate to sign an affidavit that the individual or entity is not under investigation nor in violation of these statutes.
- 10.15 **E-Verify.** The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor on or after the effective date of this Contract and thereafter during the remaining term of the Contract, including sub-contractors.
- 10.17 **Material Safety Data Sheet.** In accordance with Chapter 442, Florida Statutes, it is the Contractor's responsibility to identify and to provide to the County a Material Safety Data Sheet for any material as may apply to this Contract.
- 10.18 **Anti-Lobbying.**
- 10.18.1 If this Project is funded by federal funds, then to the best of the County's knowledge and belief:
- 10.18.1.1 No Federal appropriated funds have been paid or shall be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Contract.
- 10.18.1.2 If any funds other than Federal appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an

officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Contract, it shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- 10.19 **Safety.** The Contractor shall take the necessary precautions and bear the sole responsibility for the safety of the methods employed in performing the work. The Contractor shall at all times comply with the regulations set forth by federal, state, and local laws, rules, and regulations concerning "OSHA" and all applicable state labor laws, regulations, and standards.
- 10.20 **Background Checks.** Contractor and County understand that certain areas of the County's premises may not be available to Contractor's personnel without passing required background checks. If access is not required to perform the services contemplated by this Contract, background checks will not be required.

ARTICLE 11 - MISCELLANEOUS PROVISIONS

- 11.1 **Entire Contract.** This Contract constitutes the entire Contract between the parties. There are no understandings or Contracts related hereto other than those which are expressed herein, and all prior negotiations, Contracts, and understandings, whether oral or written, are superseded by this Contract, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.
- 11.2 **Notice.** All notices required under this Contract shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

In the case of County:	with a copies of legal notices to:
County of Volusia Attn: Director of Purchasing & Contracts Address: 123 W. Indiana Ave., Room 302 DeLand, Florida 32720 Phone: 386-736-5935 Fax: 386-736-5972	County of Volusia Attn: County Attorney Address: 123 W. Indiana Ave., Room 301 DeLand, Florida 32720 Phone: 386-736-5950 Fax: 386-736-5990

In the case of Contractor:	with a copy of legal notices to:
P & S Paving, Inc. Attn: Tim Phillips Address: 3701 Olson Drive Daytona Beach, Florida 32124 Phone: 386-258-7911	P & S Paving, Inc. Attn: Tim Phillips Address: 3701 Olson Drive Daytona Beach, Florida 32124 Phone: 386-258-7911

- 11.3 **Governing Law.** The laws of the State of Florida and the Code of Ordinances of the County of Volusia, Florida, shall govern this Contract. All questions concerning the validity, operation, interpretation, construction and enforcement of any terms, covenants or conditions of this Contract shall in all respects be governed by and determined in accordance with the laws of the State of Florida and Code of Ordinances of County of Volusia, without giving effect to the choice of law principles thereof and unless otherwise preempted by federal law.
- 11.4 **Venue and Jurisdiction.** The venue for any litigation between the parties arising under this Contract shall, if in state court, be exclusively in the County of Volusia, Florida, or, if in federal court, exclusively in the United States District Court, Middle District of Florida in Orlando, Florida. Each party hereby agrees to submit to the personal jurisdiction of these courts for any lawsuits filed there against such party arising under or in connection with this Contract.
- 11.5 **Assignment.** Contractor may not assign or otherwise convey Contractor's rights and/or obligations under this Contract without obtaining County's prior written consent, which consent County may withhold, limit and/or condition in County's sole discretion, including, but not limited to posting a performance bond. Any consent by the County under this Section shall be by written amendment to the Contract in a form and substance specified by the County in its sole discretion. If Contractor desires to assign or otherwise convey its rights and/or obligations under this Contract, Contractor no less than thirty (30) days prior to the assignment's proposed effective date, provide County with a written request for County's consent. Failure to provide such notice may result in the County assessing a processing fee of Five Hundred Dollars (US \$500.00).
- 11.5.1 Failure by the Contractor to obtain the County's consent in accordance with this Section prior to assignment or other conveyance shall: 1) constitute a material breach of the Contract; and 2) entitle the County to retain any and all legal rights, claims and defense to enforce this Section, including, but not limited to, injunctive, declaratory, damages and attorney's fees and costs. Payment of any sum by the County in accordance with the Contract to the Contractor or any person or entity prior to the Contractor obtaining the County's consent to the assignment shall not constitute a waiver of the rights of the County under this Section.
- 11.5.2 Nothing herein shall preclude the right of the County to waive its rights under this Section but no waiver shall be granted by the County without amendment to the Contract.

- 11.6 **Waiver of Jury Trial.** Contractor and County hereby expressly waive any rights either may have to a trial by jury of any civil litigation related to the Contract for any litigation limited solely to the parties of this Contract.
- 11.7 **Attorneys Fees and Costs.** Unless otherwise specifically stated herein, each party shall pay its own costs and attorney's fees relating to any dispute, mediation or litigation arising out of this Contract.
- 11.8 **Severability.** The invalidity or unenforceability of any provisions of this Contract or the Contract Documents shall not affect the validity or enforceability of any other provision of the Contract or the Contract Documents, which shall remain in full force and effect.
- 11.9 **Waiver.** Failure by either party or both parties to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Contract.
- 11.10 **Amendment.** No modification, amendment, change order, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same formality as this Contract and executed by a duly authorized official of each party.
- 11.11 **Headings.** Any paragraph and/or section headings used in this Contract are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Contract.
- 11.12 **Scrutinized Companies-FL Statute Section 287.135 and 215.473:**

Contractor must certify that the company is not participating in a boycott of Israel. For Contracts for goods or services of one million dollars or more, Contractor must also certify that Contractor is not on the Scrutinized Companies that Boycott Israel List, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has not been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law. The County will not contract for the provision of goods or services with (i) any company participating in a boycott of Israel, and, (ii) for Contracts for goods or services of one million dollars or more, any other scrutinized company as described above. Contractor must have submitted the certification form with their response to County Solicitation 20-B-1131F. 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 five (5) Calendar days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made 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 Section 287.135, Florida Statutes, as amended from time to time.

IN WITNESS WHEREOF, the parties have made and executed this Construction Contract for **COUNTYWIDE RESURFACING 2020** the day and year below written.

Attest:

COUNTY OF VOLUSIA

George Recktenwald
County Manager

BY: _____
Ed Kelley
County Chair

Date: _____

Date: _____

County Council Approval Date: _____

Attest:

P & S PAVING, INC.



Signature

BY: 

Signature

Chandler Hodge

Print Name

Tim Phillips

Print Name

Contract Administrator

Title

President

Title

Date: 6/18/20

Date: 6/18/20

