

AGREEMENT

THIS AGREEMENT, made and entered into by and between Pinellas County, a political subdivision of the State of Florida, hereinafter designated the COUNTY, and

Archer Western Construction, LLC

(Corporation, Partnership or Individual Proprietor)

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

4343 Anchor Pkwy, Suite 155

Tamps, FL 33634

herein after designated the CONTRACTOR,

WITNESSETH:

The Contractor shall perform all work and services described in the Contract Documents. The Contract is an indefinite-quantity Contract. The Maximum Contract Term Value that may be ordered is:

\$5,000,000.00

The Maximum Contract Total Value is:

\$5,000,000.00

The Contract Term is sixty (60) months or when Job Orders equal the Maximum Contract Term Value, whichever occurs first.

The COUNTY shall pay the CONTRACTOR the Job Order Amount for each Job Order issued in accordance with all terms and requirements contained in the Contract Documents, and for and in consideration of such sums, and in further consideration of the mutual covenants and promises to be kept and performed by and between the parties hereto, it is agreed as follows:

1. THE CONTRACTOR AGREES:

- A. To furnish all services, labor, materials and equipment necessary for the complete performance, in a thorough and workmanlike manner, of the Work contemplated under **Bid Title: Job Order Contracting (JOC) WWTP & Water Plant Maintenance Repair, Minor Construction & Underground Utilities - REBID, Bid No: 21-0241-CP(PLU)**, in Pinellas County, Florida, to comply with the applicable standards, and to perform all Work in strict accordance with the terms of the Contract Documents.
- B. To commence Work under this Agreement with an adequate force and equipment upon receipt of written notice from the COUNTY to proceed hereunder, and to fully complete all necessary Work under the same for each Job Order issued to fully complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Amount. The term of the contract is **sixty (60) months**. Time of performance and completion of the work of this Contract is of the essence. All Job Orders issued during a term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such term has expired. All terms and conditions of the Contract apply to each Job Order.
- C. That upon failure to complete all Work within the time provided for above, the Contractor shall pay to the County such sums as shall be determined in accordance with the Liquidated Damages provision of this Agreement, and the payment of such sum shall be secured as provided for therein.
- D. That the CONTRACTOR and each subcontractor shall furnish to the COUNTY, upon demand, a certified copy of the payroll covering Work under this Agreement, together with such other information as may be required by the COUNTY to ensure compliance with the law and the provisions of this Agreement.

- E. To procure all insurance as required by the Instructions to Bidders.
- F. To procure and maintain all permits and licenses which may be required by law in connection with the prosecution of the Work contemplated hereunder, except for those permits obtained by the County as expressly set forth in Appendix 1 of the Contract Documents. Notwithstanding the provisions above, the Contractor shall be responsible for non-compliance of all permit requirements, including all fines resulting from Contractor's non-compliance of said requirements.
- G. To permit any representative(s) of the County, at all reasonable times, to inspect the Work in progress or any of the materials used or to be used in connection therewith, whether such Work is located on or off the Project site, and to furnish promptly, without additional charge, all reasonable facilities, labor and materials deemed necessary by the County's Design Professional/Engineer/Project Manager, for the conducting of such inspections and tests as it may require.
- H. Unless otherwise provided in the special provisions, special conditions and Specifications, to assume liability for all damage to Work under construction or completed, whether from fire, water, winds, vandalism, or other causes, until final completion and acceptance by the County and notwithstanding the fact that partial payments may have been made during construction.
- I. No subcontract or transfer of Agreement shall in any case release either the Contractor or its surety of any liability under the Agreement and bonds. The County reserves the right to reject any subcontractors or equipment.
- J. Unless specifically prohibited by Florida law, the Contractor shall defend, indemnify and hold harmless the County and its officers and employees from any and all liabilities, claims, damages, penalties, demands, judgments, actions, proceedings, losses or costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, or by, or on account of, any claim or amounts recovered under the "Workers' Compensation Law" or of any other laws, by-laws, ordinance, order or decree whether resulting from any claimed breach of this Agreement by the Contractor or from personal injury, property damage, direct or consequential damages, or economic loss, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor or anyone employed or utilized by the Contractor in the performance of this Agreement. The duty to defend under this paragraph is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Contractor, the County and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to the Contractor. The Contractor's obligation to indemnify and defend under this Article will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the County or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations. The Contractor shall guarantee the payment of all just claims for materials, supplies, tools, labor or other just claims against it or any subcontractor in connection with this Agreement; and its bonds will not be released by final acceptance and payment by the County unless all such claims are paid or released.
- K. By signing this Agreement, the contractor certifies under penalty of law that it understands the terms and conditions of, and will comply with, the Pinellas County National Pollutant Discharge Elimination System (NPDES) Permit No. FLS000005 that authorizes the storm water discharge associated with construction activities.
- L. Contractor shall submit invoices for payment due as provided herein with such documentation as required by Pinellas County and all payments shall be made in accordance with the requirements of Section 218.70 *et. seq.* Florida Statutes, "The Local Government Prompt Payment Act." Invoices shall be submitted to the address below unless instructed otherwise on the purchase order, or if no purchase order, by the ordering department:

Finance Division Accounts Payable
Pinellas County Board of County Commissioners
P. O. Box 2438
Clearwater, FL 33757

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

- M. Local, State, and Federal Compliance Requirements: The laws of the State of Florida apply to any purchase made under this Invitation to Bid. Bidders shall comply with all local, state, and federal directives, orders and laws as applicable to this bid and subsequent contract(s) including but not limited to Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Equal Employment Opportunity (EEO), Minority Business Enterprise (MBE), and OSHA as applicable to this contract.

2. THE COUNTY AGREES:

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

The Job Order Amount shall be calculated using the applicable quantities, Unit Prices published in the Construction Task Catalog® and the following Adjustment Factors:

	Adjustment Factor Name	Adjustment Factor Bid
1.	Non-Secure Areas, Normal Working Hours Adjustment Factor	1 . 3 1 1 9
2.	Non-Secure Areas, Other than Normal Working Hours Adjustment Factor	1 . 3 4 0 8
3.	Secure Areas, Normal Working Hours Adjustment Factor	1 . 3 3 7 9
4.	Secure Areas, Other than Normal Working Hours Adjustment Factor	1 . 3 5 5 2
5.	Non Pre-priced Task Adjustment Factor	1 . 3 0 0 2

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

3. IT IS MUTUALLY AGREED:

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

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

1.	CONSTRUCTION CHANGE ORDERS
2.	ADDENDA
3.	SECTION B SPECIAL CONDITIONS
4.	SECTION D SPECIFICATIONS
5.	Standard Technical Specification for Utilities and Related Construction, June 2018.
6.	Pinellas County Utilities Supplemental Specifications (Supplemental Specifications). Listed in Section D of this contract
7.	FDOT Standard Specification for Road and Bridge Construction, Divisions II and III only - latest edition (FDOT Specifications). Division I is not applicable.
8.	Construction Task Catalog®
9.	Job Orders (including Detailed Scopes of Work and Requests for Proposals)

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

5. **PUBLIC RECORDS – CONTRACTOR'S DUTY**

If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this contract, contact the Pinellas County Board of County Commissioners, Purchasing Department, Operations Manager custodian of public records at 727-464-3311, purchase@pinellascounty.org, Pinellas County Government, Purchasing Department, Operations Manager, 400 S. Ft. Harrison Ave, 6th Floor, Clearwater, FL 33756.

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

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

PINELLAS COUNTY acting by and through the Board of County Commissioners

Archer Western Construction, LLC
Name of Firm

Dave Eggus
Chairman

By: [Signature]
Signature

July 13, 2021
Date

Daniel P. Walsh
Print Name

President
Title

ATTEST:
Ken Burke,
Clerk of the Circuit Court



By: [Signature]
Deputy Clerk

CGC1520860
Contractor's Registration or Certification
No. issued by the State of Florida

APPROVED AS TO FORM

Approved as to Form

By: Jacina Parson

Office of the County Attorney