

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

AKCA Incorporated

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

4603 Reece Road

Plant City, FL 33566

herein after designated the CONTRACTOR,

WITNESSETH:

That for and in consideration of an annual sum not to exceed

Six hundred seventy nine thousand two hundred sixty five dollars and fifty cents

\$ 679,265.50

to be paid by the COUNTY to the CONTRACTOR as herein provided, and in further consideration of the mutual covenants and promises to be kept and performed by and between the parties hereto, it is agreed as follows:

1. THE CONTRACTOR AGREES:

- A. To furnish all services, labor, materials and equipment necessary for the complete performance, in a thorough and workmanlike manner, of the Work contemplated under **Bid Title: Traffic Pavement Marking Services, Bid No: 178-0490-B**, 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. That this Agreement shall remain in effect for a term of sixty (60) months beginning on the date the Agreement is executed by the County. Contractor shall commence Work under this Agreement in accordance with the incorporated terms governing Work Assignments. Time of performance and completion of the Work of this Agreement is of the essence.
- C. 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.
- D. To procure all insurance as required by the Instructions to Bidders or elsewhere in the Contract Documents. If a particular Work Assignment exceeds the threshold for bonding as provided in the Florida Statutes and the Pinellas County Code, Contractor shall provide bonds as required on the forms provided by the County.
- E. 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. 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.

- F. 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 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 in accordance with the Contract Documents, including Contractor's pricing submittal, as provided in the Work Assignment.
- B. If the Contractor shall so request, to furnish, without charge, two (2) certified copies of any motions or resolutions authorizing the execution of this Agreement, or amendments thereto, or any changes in the Plans, Plans or Specifications pertaining to this Agreement.

3. IT IS MUTUALLY AGREED:

- A. That no change, alteration, amendment, payment for extra Work or agreement to pay for same, shall be binding upon the County until it has been approved the same, and until the same shall be properly approved by the Board.
- B. The County shall designate a representative insofar as prosecution of the Work, and interpretation of the Plans and Specifications are concerned, and that no payments shall be made by the County under this Agreement except upon the certificate of the proper County designee.
- C. This Agreement shall be interpreted under and its performance governed by the laws of the State of Florida.
- D. The failure of the County to enforce at any time or for any period of time any one or more of the provisions of the Contract Documents shall not be construed to be and shall not be a waiver of any such provision or provisions or of its rights thereafter to enforce each and every such provision.
- E. Each of the parties hereto agrees and represents that this Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and that no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, Work performed, or payments made prior to execution hereof shall be deemed merged into, integrated and superseded by this Agreement.
- F. Should any provision of this Agreement be determined by a court to be unenforceable, such determination shall not affect the validity or enforceability of any section or part thereof.
 - A. Pursuant to section 218.80, Florida Statutes, Pinellas County discloses to the Contractor the following permits and fees which will have to be obtained by and will be payable by the Contractor. Reimbursement will be for the actual amount paid, as evidenced by official receipts from the offices collecting the fees. Permits are including but not limited to the following:
 - 1. License Fees: The Pinellas County Construction Licensing Board (PCCLB), an independent government agency, may require licensure or registration of a State of Florida Construction License. These are not Pinellas County Government fees, but the Contractor is hereby put on notice that fees may be required by the PCCLB. **License fees are not reimbursable.**
 - 2. Permits and Associated Fees: Contractor will obtain all necessary permits and pay the associated permit fees
 - 3. Impact Fees – if applicable are responsibility of the contractor.
 - 4. Inspection Fees - Contractor will be responsible for all inspection fees.
 - 5. Other Permits or Fees Required by Pinellas County for the Completion of the Work, if applicable.

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

- B. All sales, consumer, use, and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work, shall be paid by the Contractor.
- C. Compliance with Permit and Licenses Requirements: The Contractor shall comply with all applicable Local, State and Federal permit conditions and license requirements, applicable building and construction code requirements and such other rules and regulations as may apply to the prosecution of Work. Failure of the Contractor to comply with the above-specified requirements shall result in Contractor being prohibited from performing Work pursuant to this Agreement. Any additional costs incurred by the Contractor as a result of non-compliance shall be the responsibility of the Contractor and shall not be paid by the County. Additionally, Contractor shall be required to pay any fines due as a result of non-compliance with the applicable requirements.

1. CLAIMS AND DISPUTES

- A. A Claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the contract documents, payment of money, extension of time or other relief with respect to the terms of the contract documents. The term "Claim" also includes other disputes and matters in question between the County and the Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate a claim shall rest with the party making the Claim.
- B. Claims by the Contractor shall be made in writing to the Project Manager within two (2) regular work days after the commencement of the event giving rise to such Claim or else the Contractor shall be deemed to have waived the claim. Written supporting data shall be submitted to the Project Manager within fifteen (15) calendar days after the occurrence of the event, unless the County grants additional time in writing, or else the Contractor shall be deemed to have waived the Claim. All Claims shall be priced in accordance with provisions of the section in this document titled *Changes in the Work*.
- C. The Contractor shall proceed diligently with its performance as directed by the County, regardless of any pending Claim, action, suit, or administrative proceeding, unless otherwise agreed to by the County in writing. The County shall continue to make payments in accordance with the contract documents during the pendency of any Claim.

2. TERMINATION

A. Termination for Default

- 1. The Contractor shall be considered in material default of the Agreement and such default shall be considered cause for the County to terminate the Agreement, in whole or in part, as further set forth in this paragraph, for any of the following reasons:
 - a. Failing to begin Work under the contract documents within the time specified herein;
 - b. Failing to properly and timely perform the work as directed by the Project Manager or as provided for in the contract documents;
 - c. Performing the work unsuitably or neglecting or refusing to remove materials or to correct or replace such work as may be rejected as unacceptable, unsuitable or otherwise defective;
 - d. Discontinuing the prosecution of the work;
 - e. Failing to resume work that has been suspended within a reasonable time after being notified to do so;
 - f. Becoming insolvent or declared bankrupt, or committing any act of bankruptcy;
 - g. Allowing any final judgment to stand unsatisfied for more than ten days;
 - h. Making an assignment for the benefit of creditors;
 - i. Failing to obey laws, ordinances, regulations or other codes of any governmental authority with jurisdiction on the Project;
 - j. Failing to perform or abide by the terms or spirit of the Contract Documents.
- 2. The County shall notify the Contractor in writing of the Contractor's default. If the County determines that the Contractor has not taken substantial steps toward effecting a remedy or cure of the default or defaults in its performance within seven (7) calendar days following receipt by the Contractor of written notice of default or defaults, then the County, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties, and without prejudice to any other right it may be entitled to hereunder or by law, may terminate the Contractor's right to proceed under this Agreement, in whole or in part, and may take possession of the Work and any materials, tools, equipment, and appliances of the Contractor, take assignments of any of the Contractor's subcontracts and purchase orders and complete the Contractor's work by whatever means, method or agency which the County, in its sole discretion, may choose.
- 3. If the County deems any of the foregoing remedies necessary, the Contractor agrees it shall not be entitled to receive any further payment until after the Work is completed. All money expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses, (including Project Manager and Architectural fees) or damages incurred by the County incident to such completion, shall be deducted from the Agreement Amount, and if such expenditures exceed the unpaid balance of the Agreement Amount, the Contractor agrees to pay promptly to the County on demand, the full amount of such excess, including costs of collection, and interest thereon at the maximum legal rate of interest until paid.

4. The liability of the Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained and obligations assumed by the County in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefore or relating to the Work, and in settlement, discharge, or compromise of any claims, demands, suits or judgments pertaining to or arising out of the Work hereunder.
5. If after notice of termination of the Contractor's right to proceed pursuant to this subparagraph A, "Termination for Default", it is determined for any reason that the Contractor was not in default or that its default was excusable, or that the County is not entitled to the remedies against the Contractor provided herein, then the Contractor's remedies against the County shall be the same as and limited to those afforded the Contractor pursuant to the Termination for Convenience subparagraph B below.

B. Termination for Convenience and Right of Suspension

1. The County shall have the right to terminate or suspend this Agreement, in whole or in part; without cause upon seven (7) calendar day's written notice to the Contractor.
 2. In the event of such termination or suspension for convenience, the Contractor's sole recovery against the County shall be limited to that portion of the agreement amount earned through the date of termination or suspension, together with any retainage withheld and reasonable termination or suspension expenses incurred, but the Contractor shall not be entitled to any other or further recovery against the County, including, but not limited to, damages and any anticipated profit or Work not performed.
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:

ADDENDA

SECTION E SPECIFICATIONS

SECTION B SPECIAL CONDITIONS

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

AKCA Incorporated
Name of Firm

Chairman

By:

Signature

Date

Scott Walls

Print Name

ATTEST:
Ken Burke,
Clerk of the Circuit Court

Vice President

Title

By:

F341337287001
Contractor's Registration or Certification
No. issued by the State of Florida

Deputy Clerk

APPROVED AS TO FORM

By:


Office of the County Attorney