

FORM OF AGREEMENT

FOR ROAD CONSTRUCTION

CONTRACT ID: 2024_016

This Agreement is entered into between **LEVY COUNTY**, a political subdivision of the State of Florida, P.O. Box 310, Bronson, FL 32621 (the “County”) and ANDERSON COLUMBIA CO, INC., (the “Contractor”) on July 2, 2024 (the “Effective Date”).

WHEREAS, on April 19, 2024, County issued Invitation to Bid No. 2024_016 for the services described in Article 2 below (the “ITB”) in accordance with applicable procurement policies and procedures;

WHEREAS, Contractor submitted a bid in response to the ITB and was selected by the County as the lowest responsive and responsible bidder; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

ARTICLE 1 – INCORPORATION OF DOCUMENTS

The ITB consisting of 79 pages which included: Advertisement; Special Provisions; Bid Form; Bid Submission Checklist; Proposal Form; Bid Unit Price Schedule; Public Entity Crime Statement; E-Verify Form; Non-Collusion Affidavit; Failure to Perform Questionnaire; Form of Agreement; Form of Performance and Payment Bond and Plans for Levy County Road C-341 SCRAP Resurfacing from SR 345 to US 98 as prepared by Dewberry Engineers Inc., for FDOT Financial Project ID: 445821-1-54-01 and Addenda to ITB dated May 21, 2024 (the “Bid”), all of which are on file in the County Procurement Department, are made a part of this Agreement as if set forth in full. In the event of conflict, the documents will be given precedence in the following order: (1) this Agreement; (2) the Addenda; (3) the ITB; and (4) the Bid.

ARTICLE 2 – SCOPE OF SERVICES

As more fully described in the ITB, the Project consists of milling and resurfacing of approximately 2.09 miles of County Road C-341 from SR 345 to US 98. The project shall also include minor drainage improvements and all associated striping and signage upgrades. Work to be completed within 120 calendar days unless agreed to by the County.

ARTICLE 3 – CONTRACTOR’S RESPONSIBILITIES

- 3.1 Contractor shall perform the Scope of Services in strict accordance with the provisions of this Agreement.
- 3.2 Contractor agrees that, to the best of its ability, the key personnel identified in the Bid (if any) will be retained by Contractor throughout the term of this Agreement. If Contractor is unable to retain any of the key personnel identified in its Bid, it shall provide prompt notice including the names and qualifications of the replacement personnel to County.
- 3.3 Contractor shall obtain and maintain throughout the term of this Agreement, all bonds required by the ITB and all licenses and permits required by law.

- 3.4 Contractor shall comply with all federal, state, and local laws that apply to performance of this Agreement.
- 3.5 As required by 119.0701, Florida Statutes, the following notice is given regarding the Contractor's duty to comply with Florida's public records laws (Chapter 119, Florida Statutes), as the same may be amended. Failure to comply shall constitute a breach of this Agreement. Specifically, but not by way limitation, Contractor shall:
- i. Keep and maintain public records required by County to perform services;
 - ii. Upon request from 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;
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of the services to be provided by Contractor under this Agreement if Contractor does not transfer the records to County; and
 - iv. Upon completion of this Agreement, transfer, at no cost, to County all public records in possession of Contractor or keep and maintain public records required by County to perform the services. If Contractor transfers all public records to County upon completion of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of this Agreement, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County, upon requests from County's custodian of public records, in a format that is compatible with the information technology systems of County.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

TELEPHONE: (352) 486-5218

EMAIL: LEVYBOCC@LEVYCOUNTY.ORG

MAILING ADDRESS: P.O. BOX 310, BRONSON, FL 32621

- 3.6 If an owner, except a stockholder in publicly traded corporation, or an employee of the Contractor has been convicted of any offenses requiring registration as a sexual offender or sexual predator, regardless of the location of conviction, the Contractor shall ensure that work on the project, by the offender or predator, is consistent with his/her probation requirements.

ARTICLE 4 – TERM/TERMINATION

- 4.1 The term of this Agreement shall begin on the Effective Date and continue until the Scope of Services has been completed and Contractor has been paid in full for all Services, but in no event later than 12 months from the Effective Date, unless a written extension is granted by the County.

- 4.2 This Agreement may be terminated by County without cause upon no less than thirty (30) calendar days advance written notice to Contractor. This Agreement may be terminated by the County for cause upon no less than ten (10) calendar days advance written notice to Contractor, which notice specifies the cause of termination and allows the Contractor a reasonable period in which to cure the cause of termination. This Agreement may be immediately terminated by the County in the following circumstances: funds necessary to pay for the Contractor's services are no longer available, the Contractor is placed either in voluntary or involuntary bankruptcy or makes any assignment for the benefit of creditors, or the Contractor fails to comply with Florida's public records laws.
- 4.3 In the event of termination, Contractor shall be entitled to compensation for services rendered and costs incurred through the effective date of termination. All finished or unfinished documents, data, studies, reports, and other work product prepared by Contractor (if applicable) shall become the property of County and shall be delivered by Contractor to County immediately upon the effective date of termination.
- 4.4 Notwithstanding the foregoing, the Contractor shall not be relieved of liability for damages sustained by the County from breach of the Agreement by Contractor and the County may reasonably withhold payment to Contractor for the purposes of set-off until such time as the exact amount of damages due the County from the Contractor is determined.

ARTICLE 5 – PAYMENT

- 5.1 The Contractor agrees to provide the Scope of Services to the County for the sum of \$1,466,399.69 One Million Four Hundred Sixty-Six Thousand Three Hundred Ninety-Nine Dollars and Sixty-Nine Cents as set forth in the Bid Unit Price Schedule submitted with ITB_2024_016. Payment will be made by County to Contractor on a monthly basis for work completed, as estimated by the Project Engineer, with 10% retainage.

ARTICLE 6 – STANDARDS AND CORRECTIONS

- 6.1 Contractor shall perform or furnish to County all services to a level of technical skill, ability, and diligence as required for professionals having the level of skill, expertise and specialized knowledge, as represented to the County, both orally and in writing, to be possessed by Contractor, all in accordance with this Agreement and with generally accepted standards of professional practice and with the laws, statutes, ordinances, codes, rules and regulations governing Contractor's profession. The same standards of care shall be required of any subconsultant or subcontractor engaged by Contractor.
- 6.2 Contractor shall, without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials arising from the negligent act, error or omission of Contractor or any subconsultant or subcontractor engaged by Contractor under this Agreement. The foregoing shall be construed as an independent duty to correct rather than a waiver of County's rights under any applicable statutes of limitations. County review of, approval of, acceptance of, or payment for any of Contractor's work product, services, or materials shall not be construed to operate as a waiver of any County's rights under this Agreement or cause of action County may have arising out of the performance of this Agreement. The provisions of this section shall survive the termination of this Agreement.

ARTICLE 7 – COUNTY PROPERTY

7.1 All documents, data, studies, reports, and other work product prepared by Contractor (if applicable) shall become the property of County and shall be delivered by Contractor to County without restriction or limitation as to use. Any other use by Contractor or other parties shall be approved in writing by the County. If requested, Contractor shall deliver the documents to the County within fifteen (15) calendar days.

ARTICLE 8 – NOTICES

8.1 Any notice required or permitted to be sent hereunder shall be sent by United States first class mail, postage prepaid, or hand-delivered to the parties at the addresses listed below:

If to County:
County Coordinator
P.O. Box 310
Bronson, FL 32621

If to Contractor:

ARTICLE 9 – NO CONTINGENT FEES

9.1 Contractor certifies that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of breach or violation of this provision, County may terminate this Agreement without liability and deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 10 – NO ASSIGNMENT

10.1 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances by Contractor without prior written consent of County.
10.2 Contractor shall not subcontract any services or work to be provided to County without the prior written approval of the County. The County reserves the right to approve or reject any subcontractor or subconsultant and to evaluate/inspect any subcontractors in order to determine the ability of the subcontractor or subconsultant. The County’s approval of a subcontractor or subconsultant shall not be unreasonably withheld. The Contractor is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

ARTICLE 11 – INDEMNIFICATION

11.1 The Contractor agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless County and all of County’s elected officials, officers, agents, and employees from and against all claims, liability, loss, and expense, including reasonable costs, collection expenses, attorneys’ fees, and court costs which may arise because of negligence (whether active or passive), misconduct, or other fault, in whole or in part (whether joint, concurrent, or

contributing), of Contractor or its officers, agents or employees in performance or non-performance of its obligations under an agreement. Contractor recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to County when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of valuable consideration provided by County in support of these indemnification, legal defense and hold harmless contractual obligation in accordance with the laws of the State of Florida. Compliance with any insurance requirements required elsewhere within this Agreement shall not relieve Contractor of its liability and obligation to defend, hold harmless and indemnify County as set forth in this provision. Nothing herein shall be construed to extend County's liability beyond that provided in Section 768.28, Florida Statutes.

- 11.2 The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of the County to enforce any of the provisions hereof shall not be construed to be a waiver of the right of the County thereafter to enforce such provisions.
- 11.3 This Article shall survive termination of this Agreement.

ARTICLE 12 – INSURANCE

- 12.1 Prior to entering into an agreement with the County, Contractor shall, at its sole cost and expense, procure and maintain throughout the term of this Agreement, insurance policies in coverages and limits specified in the ITB – Special Provisions, or to the extent and in such amounts as required by Florida law.
- 12.2 In addition, for those policies that are allowed by law to carry an additional named insured, Contractor will provide declarations pages from policies or insurance policies (other similar evidence) of insurance executed by a licensed insurance broker, brokerage or similar licensed insurance professional evidencing such coverage, listing coverages and limits, expirations dates, terms of policies and all endorsements, and shall include the ITB/Project Name, and naming “Levy County, a political subdivision of the State of Florida, its officers, officials, agents, employees and volunteers and the State of Florida, Department of Transportation, its officers and employees” as a named, additional insured, as well as furnishing County with a certified copy, or copies, of said insurance policies.
- 12.3 In addition, each policy required in the ITB – Special Provisions shall require that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverages or limits, written notice thereof shall be given to County. Any and all deductibles to any insurance policy shall be the responsibility of the Contractor. Said insurance coverages procured by Contractor as required herein shall be considered, as primary insurance over and above any other insurance, or self-insurance, available to County, and that any other insurance, or self-insurance available to County shall be considered secondary to, or in excess of, the insurance coverage(s) procured by County as required herein. Nothing herein shall be construed to extend County's liability beyond that provided in Section 768.28, Florida Statutes.

ARTICLE 13 – SEVERABILITY

- 13.1 In the event that a court having appropriate jurisdiction deems any provision of this Agreement invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. This Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all terms and provisions hereof.

ARTICLE 14 – GOVERNING LAW/VENUE/WAIVER OF JURY TRIAL/SOVEREIGN IMMUNITY

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

ARTICLE 15 – INDEPENDENT CONTRACTOR

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

ARTICLE 16 – THIRD PARTY BENEFICIARIES

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

ARTICLE 17 – MISCELLANEOUS PROVISIONS

- 17.1 Pursuant to Section 215.4725, Florida Statutes, contracting with any entity listed on the Scrutinized Companies that Boycott Israel List or that is engaged in the boycott of Israel is prohibited. Any contract for goods or services of One Million Dollars (\$1,000,000) or more may be terminated at the County's option if it is discovered that the Contractor submitted false documents of certification, is listed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

- 17.2 As required by Section 287.133(3)(a), Florida Statutes: "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, Bid, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, Bid, 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, Bids, or replies on leases or 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."
- 17.3 If it is discovered that Contractor provided false statements in the Non-Collusion Affidavit submitted with its Bid, or it is discovered that collusion existed between Contractor and any other proposers or parties, the responses of all participants in such collusion will be rejected and/or this Agreement terminated and no participants in the collusion will be considered in future procurement processes.
- 17.4 The Contractor must comply, as applicable, with the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Florida Civil Rights Act, and Levy County Resolution 2011-59, and other laws that prohibit harassment and discrimination, all as the same may be amended. Specifically, but not by way of limitation, the Contractor agrees that:
- i. No person shall, on the grounds of race, color, sex, religion, age, disability, national origin, genetics, pregnancy or marital status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, activity or service funded through this Contract.
 - ii. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, national origin, genetics, pregnancy or marital status. Contractor agrees to post notice in a conspicuous place, available to employees and applicants for employment, setting forth the provision of this non-discrimination clause.
 - iii. Contractor will, in all solicitations or advertisements regarding program activities, services provided or applications for employment, state that all qualified applicants will receive consideration for services or employment without regard to race, color, religion, sex, age, disability, national origin, genetics, pregnancy or marital status.
 - iv. County may require Contractor to submit reports, and permit the County access to Contractor's books, records, accounts and other sources of information and its facilities, as may be reasonably necessary to determine Contractor's compliance with laws that prohibit harassment and discrimination.
- 17.5 The County and/or its designee shall have the right at its sole expense to audit the compliance by the Contractor with the terms, conditions, obligations, limitations, restrictions, and requirements of this Agreement and such right shall extend for a period of three (3) years after expiration or termination of this Agreement.
- 17.6 Contractor agrees to pay all sales, use, or other taxes, assessments, and other similar charges when due now or in the future, required by any local, state, or federal law, including but not limited to such taxes and assessments as may from time to time be imposed by the County in accordance with this Agreement. Contractor further agrees that it shall protect, reimburse, and indemnify County from and assume all liability for its tax and assessment obligations under the terms of the Agreement.
- The County is exempt from payment of Florida state sales and use taxes. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual

obligations with the County, nor is the Contractor authorized to use the County's tax exemption number in securing such materials.

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

17.7 Contractor agrees to comply with the requirements of Section 448.095(2), Florida Statutes, by using the E-Verify system to verify the work authorization of newly hired employees and will require the same of any of its subcontractors.

17.8 The Contractor acknowledges that the Florida Department of Transportation is the funding agency through an Small County Road Assistance Program (SCRAP) grant and further agrees that:

- The Contractor shall permit and shall require its subcontractors to permit the Florida Department of Transportation's authorized representatives to inspect all work, materials, payrolls, and records, and to audit the books, records, and accounts pertaining to the financing and development of the Project.
- The Contractor shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. The Contractor shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. The Contractor shall include this paragraph in all subcontracts for work in connection with this Contract.
- The Contractor, in consideration of one dollar and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged to the fullest extent permitted by law, shall indemnify and hold harmless the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, its officers and employees, from and against any and all liabilities, injuries, damages, losses, expenses and costs, including, but not limited to, reasonable attorney's fees and defense costs, to the extent caused by the negligence, recklessness, misconduct, wrongdoing, want of care or skill, or default, including, but not limited to, patent infringement, by the Contractor, his, its or their agent or employee or subcontractor or any other person employed or utilized by the Contractor in the performance of this Agreement, including but not limited to errors in plans furnished by the Contractor. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida's sovereign immunity. The Contractor shall include this paragraph in all subcontracts for work in connection with this Agreement.

The Contractor agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

ARTICLE 18 – ENTIRE AGREEMENT; SEVERABILITY; AUTHORITY

18.1 This Agreement contains the entire agreement of the parties, and may be amended, waived, changed, modified, extended, or rescinded only in writing signed by the party against whom any such amendment, waiver, change, modification, extension and/or rescission is sought. If any term or condition of this Agreement is deemed, by a court having appropriate jurisdiction, invalid or unenforceable, the remainder of the terms and conditions of this Agreement shall remain in full force and effect. This Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all the terms and provisions hereof. The person signing this Agreement represents and warrants that he or she is duly authorized and to execute and deliver this Agreement on behalf of the

Contractor. The signatory represents and warrants to the County that the execution and delivery of this Agreement and the performance of the Services and obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the Contractor and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the Effective Date.

**BOARD OF COUNTY COMMISSIONERS
LEVY COUNTY, FLORIDA**

Desiree Mills, Chair

ATTEST: Danny Shipp, Clerk of the
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners

Danny Shipp, Clerk

Approved as to form and legal sufficiency

Nicolle M. Shalley, County Attorney

CONTRACTOR

By: _____
Title: _____

ATTEST/WITNESS
