

**SUMTER COUNTY C-478 FROM US 301 TO THE CITY OF CENTER HILL SOUTHERN
LIMITS RESURFACING PROJECT AGREEMENT**

THIS AGREEMENT (hereinafter referred to as "Agreement") is made and entered into this 28TH day of April, 2020, by and between **Board of Sumter County Commissioners** (hereinafter referred to as "Board," or "County"), whose address is 7375 Powell Road, Wildwood, Florida 34785, and CWR Contracting, Inc. (hereafter referred to as "Contractor"), whose address is 4208 CR 124A, Wildwood, Florida 34785.

RECITALS

WHEREAS, the Board has need of professional services for ITB 009-0-2019/RS; and

WHEREAS, the parties desire to enter into a written agreement outlining the duties, responsibilities and compensation of Contractor, based on the Contractor's response to ITB 009-0-2019/RS Sumter County C-478 from US 301 to the City of Center Hill Southern Limits Resurfacing Project.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The relationship of the Contractor to the Board will be that of a professional Contractor and the Contractor will provide the professional and technical services required under this Agreement in accordance with acceptable professional practices and ethical standards applicable to Contractor's profession, and Contractor will endeavor to provide to the Board prompt and efficient services to the best of its ability.
2. Contractor is hereby retained and employed as a Sumter County Contactor, and will work with the Board to provide services in accordance with the scope of work outlined in ITB 009-0-2019/RS.
3. The term of this Agreement shall commence on April 14, 2020 and continue in full force for 270 days for substantial completion with 30 calendar days for final completion from the date established in the Notice to Proceed, unless otherwise terminated as provided in paragraph four (4) of this Agreement. The term of this Agreement does not relieve the Contractor of any future responsibility as described in paragraph six (6) of this Agreement.
4. This Agreement may be terminated by either party upon thirty (30) days prior written notice to the other party at the address designated in this Agreement for receiving such notice. If this Agreement is terminated, Contractor shall be authorized to receive payment for all work performed up to the date of termination.
5. With regard to compensation paid to Contractor, Contractor shall furnish to the Board an itemized invoice detailing all of Contractors hours, services, expenses and any other services utilized by the Board. The invoice shall be itemized pursuant to and in accordance with the Fee Schedule, attached hereto as Exhibit A, and incorporated herein *in haec verba*. Contractor shall submit all invoices pursuant to the Local Government Prompt Payment Act, F.S. 218. Contractor acknowledges and agrees that the rates set forth in the Fee Schedule shall remain fixed throughout the duration of this Agreement, including both the

Initial Term and any Renewal Term, and thereafter shall only be adjusted by mutual written agreement of both parties.

- a. For construction services progress payments, 10 percent (10%) of the payment as retainage.
- b. After 50-percent completion of the construction services, the retainage will be reduced to 5 percent (5%) of each subsequent progress payment made to the contractor.
- c. After 50-percent (50%) completion of the construction services, the contractor may request for up to one-half (1/2) of the retainage held by the County. The County will make the payment to the contractor unless the County has grounds for withholding the payment of retainage.

6. General Considerations.

- a. All reports, drawings, designs, specifications, notebooks, computations, details, and calculation documents prepared by Contractor and presented to the Board pursuant to this Agreement are and remain the property of the Board as instruments of service.
- b. All analyses, data, documents, models, modeling, reports and tests performed or utilized by Contractor shall be made available to the Board upon request and shall be considered public records.
- c. Contractor is required to: (i) keep and maintain public records required by Board; (ii) upon request from Board's custodian of public records, provide Board with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a reasonable 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 this Agreement and following completion of this Agreement if Contractor does not transfer the records to Board; (iv) upon completion of this Agreement, transfer, at no cost, to Board all public records in possession of Contractor or keep and maintain public records required by Board.
- d. If Contractor transfers all public records to Board 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 Board, upon request from Board's custodian of public records, in a format that is compatible with the information technology systems of Board.
- e. Contractor shall keep all books, records, files, drawings, plans and other documentation, including all electronically stored items, which concern or relate to the services required hereunder (the "Records"), for a minimum of five (5) years from the date of expiration or termination of this Agreement, or as otherwise required by any applicable law, whichever date is later. The Board shall have the right to order, inspect, and copy all the Records as often as it deems necessary during any such period-of-time. The right to audit, inspect, and copy Records shall include all of the records of sub-Contractors (if any).
- f. Contractor shall, at all times, comply with the Florida Public Records Law, the Florida Open Meeting Law and all other applicable laws, rules and regulations of the State of Florida.

10. Contractor is, and shall be, in the performance of all services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of Board; and no provisions of Board's personnel policies shall apply to this Agreement. None of the benefits provided by Board to its employees including, but not limited to, worker's compensation insurance and unemployment insurance, are available from Board to Contractor, or its employees, agents or servants. Contractor assumes responsibility for payment of all federal, state and local taxes imposed or required of Contractor including but not limited to FICA, FUTA, unemployment insurance, Social Security and income tax laws for which Contractor as employer is responsible. Contractor shall be solely responsible for any worker's compensation insurance required by law and shall provide the Board with proof of insurance upon demand. The parties agree that Board shall not: (a) pay dues, licenses or membership fees for Contractor; (b) require attendance by Contractor, except as otherwise specified herein; (c) control the method, manner or means of performing under this Agreement, except as otherwise specified herein; or (d) restrict or prevent Contractor from working for any other party.
11. **Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder)], when and to the extent such failure or delay is caused by or results from the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, warlike operation, insurrection, rebellion, revolution, military or usurped power, sabotage or other civil unrest; (d) strikes, embargoes, blockades, labor stoppages, lockouts or slowdowns or other industrial disturbances or inability to obtain necessary materials or services (e) governmental delay regarding permits or approvals; (f) action by any governmental authority; (g) national or regional emergency; (h) shortage of adequate power or transportation facilities; or (j) other similar events beyond the reasonable control of the party impacted by the Force Majeure Event (the "**Impacted Party**") and provided further, however, that such performance shall be resumed and completed with due diligence and reasonable dispatch as soon as the contingency causing the delay or impossibility shall abate.
12. **Attorney's Fees; and Costs of Enforcement.** In the event suit is commenced to enforce this Agreement, costs of said suit including reasonable attorneys' fees in all proceedings, trials, investigations, appearances, appeals and in any bankruptcy proceeding or administrative proceeding shall be paid to the prevailing party by the non-prevailing party. In the event of default by either party hereto, the defaulting party shall be liable for all costs and expenses, including reasonable attorney's fees and costs incurred by the other party in enforcing its rights hereunder, whether litigation be instituted or not, at the trial court and appellate court level.
13. **Law of the Agreement; Jurisdiction and Venue.** The Parties agree that the laws of the State of Florida shall govern any dispute arising from or related to this Agreement. The Parties to this Agreement agree that venue and jurisdiction is mandated to lie only in the state courts located in Sumter County, Florida. Removal of this case to federal court is not permitted. Litigation in federal court is precluded by agreement of the parties hereto. If, even though precluded by agreement of the Parties hereto, litigation arising from or based upon this contract should be mandated by a court of competent jurisdiction issued pursuant to a duly noticed hearing giving Sumter County adequate time to respond and all of the benefits of due process to lie in the proper venue or jurisdiction of a federal court, that

federal court shall only be in the Middle District of Florida, Ocala Division. The Parties further agree that entry into this agreement constitutes irrevocable consent that the exclusive venue for any such dispute shall lie solely in the state or county courts in and for Sumter County, Florida. The Parties expressly and irrevocably waive any right(s) to removal of any such dispute to any federal court, unless the federal court has exclusive jurisdiction; in such cases, the parties agree that the exclusive venue for any such disputes shall be the United States District Court, in and for the Middle District of Florida, Ocala Division. Process in any action or proceeding referred to in this paragraph may be served on any party anywhere in the world, such party waives any argument that said party is not subject to the jurisdiction of the state courts located in Sumter County, Florida and that the laws of the state of Florida.

14. **Entire Agreement.** This Agreement contains the entire agreement of the Parties and may not be changed except by written agreement duly executed by the Parties hereto. This Agreement supersedes any prior understandings or agreements between the Parties, and there are no representations, warranties, or oral agreements other than those expressly set forth herein.
15. **Assignment.** This Agreement shall not be assigned nor may any portion of the obligations contemplated in this Agreement be subcontracted to another party without prior written approval of County. No such approval by County of any assignment or subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation of County. All such assignments and subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that County shall deem necessary.
16. **Compliance with Licenses, Permits, and Applicable Laws.** In performing services hereunder, Contractor shall comply with all federal, state and local laws and regulations. Contractor shall be responsible for identifying and obtaining all permits necessary to complete the scope of services. Contractor shall be responsible for obtaining, at its sole cost and expense, all necessary license licenses and other governmental approvals required in order for Contractor to provide the type of services required hereunder.
17. **E-Verify:** system established by the U.S. Department of Homeland Security to determine the immigration and work-eligibility status of prospective employees.
18. The Contractor agrees to certify to the Board that Contractor is in compliance with the federal E-Verify program, including obtaining written certification from all sub-Contractors who will participate in the performance of scope of services contemplated in this Agreement. All sub-Contractor certifications must be kept on file by the Contractor and made available to the state and/or the Board upon request. The Board reserves the right to take action against any Contractor deemed to be non-compliant; potential actions may include, but are not limited to, cancellation of this Agreement and/or suspending or debaring the Contractor from performing services for the County.
19. **Conflict of Interest.** Contractor shall notify Board in writing of any commitments during the term of this Agreement, which may constitute a potential or actual conflict of interest with respect to the scope of services to be performed for the Board.
20. **Corporate Status; Change of Ownership.** If Contractor is a non-governmental, corporate entity:

- a. *Corporate Status.* Contractor shall ensure that the corporate status shall continuously be in good standing and active and current with the state of its incorporation and the State of Florida and at all times throughout the Term, and any renewal or extension hereof. Failure of the Contractor to keep its corporate status active and current shall constitute a material breach under the terms of this Agreement.
- b. *Change of Ownership.* Contractor shall notify County immediately upon any change in corporate ownership or any substitution of the key professional assigned (the "Key Person") to perform under this Agreement ("Change of Ownership"). County shall have the option of cancelling this Agreement if a Change of Ownership is not suitable to it, provided however, no cancellation shall relieve the Contractor of its obligations to perform the work described herein or for liability for breach of same. A Change of Ownership means the occurrence of any one or more of the following: a sale, lease, or other disposition of 50% or more of the interest or assets of the company or corporation; a merger, reverse merger or consolidation with another entity; a transaction wherein a third-party becomes the beneficial owner having fifty (50%) percent or more interest in the corporation or company; or fifty (50%) percent or more of the total number of votes that may be cast for any act of the entity.

21. **Default.** Neither Party shall declare the other party in default of any provision of this Agreement without giving the other party at least ten (10) days advance written notice of intention to do so, during which time the other party shall have the opportunity to remedy the default. The notice shall specify the default with particularity.

22. **Dispute Resolution.** All disputes arising out of or in connection with this Agreement shall be attempted to be settled through good-faith negotiation between the Parties, followed if necessary within thirty (30) days by professionally-assisted mediation. Any mediator so designated must be acceptable to each Party. The mediation will be conducted as specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either Party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each Party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the Parties. Failing resolution through negotiation or mediation, either Party may file an action in a court of competent jurisdiction or other appropriate remedy available in law or equity as defined herein below.

23. **Jointly Drafted.** The Parties agree that this Agreement is entered into knowingly and voluntarily, after having the opportunity to fully discuss it with an attorney. Having had the opportunity to obtain the advice of legal counsel to review, comment upon, and redraft this Agreement, the Parties agree that this Agreement shall be construed as if the parties jointly prepared it so that any uncertainty or ambiguity shall not be interpreted against any one party and in favor of the other.

24. **Parties Acknowledgement; Parties Bound.** The Parties acknowledge that they have read this Agreement, and that they understand the terms and conditions herein and that the terms have been fully and completely explained to the Parties prior to the execution

thereof. Each party acknowledges that the other party has made no warranties, representations, covenants, or agreements, express or implied, except as expressly contained in this Agreement. Further, the Parties have caused this Agreement to be executed on their respective behalf by the authorized officer whose signature appears below under their respective name, to be effective as of the date first written above. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors, heirs, and personal representatives.

25. **Waiver.** The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.
26. **Time is of the Essence.** Time shall be of the essence of this Agreement.
27. **Survivability.** Any provision of this Agreement, which obligates any of the Parties to perform an obligation either before the commencement of the Term or after the expiration of the Term, or any renewal or extension thereof, shall be binding and enforceable notwithstanding that performance is not within the Term, and the same shall survive.
28. **Severability.** Whenever possible each provision and term of this Agreement will be interpreted in a manner to be effective and valid but if any provision or term of this Agreement is held to be prohibited or invalid, then such provision or term will be ineffective only to the extent of such prohibition or invalidity, without invalidating or affecting in any manner whatsoever the remainder of such provision or term or the remaining provisions or terms of this Agreement.
29. **Counterparts.** This Agreement may be executed in a number of identical counterparts and a facsimile or electronic/digital copy shall be treated as an original. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
30. **Section and Paragraph Headings.** Captions or paragraph headings herein contained are for organizational convenience only and shall not be constructed as material provisions of this agreement or to limit any provisions hereunder.
31. **Cooperation; Supplementary Actions.** All Parties agree to cooperate fully and to execute any supplementary documents, and to take any additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement, and which are not inconsistent with its terms.
32. **Miscellaneous.** Whenever the context shall so require, all words in this Agreement of one gender shall be deemed to include the other gender.
33. **Incorporation of Recitals.** Each of the WHEREAS clauses listed above are hereby re-alleged and incorporated into this Agreement as if otherwise fully stated herein.
34. **Notice.** Whenever any notice, demand or request is required or permitted hereunder, such notice, demand or request shall be made in writing and shall be personally delivered to the individuals listed below, sent via prepaid courier or overnight courier, or deposited in the United States mail, registered or certified, return receipt requested, postage prepaid,

addressed to the addresses (and individuals) set forth below. No other form of electronic communications (Facebook, Twitter, Text) will be deemed Notice.

35. **Hold Harmless.** To the fullest extent permitted by law, the Agency's contractor shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, and its officers and employees, from 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 and persons employed or utilized by the contractor in the performance of this Contract. This indemnification 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.

<u>FOR THE BOARD</u>	<u>FOR THE CONTRACTOR</u>
Name: Bradley S. Arnold	Name: _____
Address: 7375 Powell Road, Wildwood, FL 34785	Address: _____
Title: County Administrator	Title: _____
Date: _____	Date: _____

IN WITNESS WHEREOF, the parties have signed this agreement the day and year first above written.

ATTEST: SUMTER COUNTY
BOARD OF COUNTY COMMISSIONERS

By: _____
By: Chairman
Date Signed: _____

ATTEST: CWR Contracting, Inc.
By: _____
By:
Date Signed: _____

PART 6: EXHIBITS
EXHIBIT A: BID FORM

Sumter County Safety Improvements - C-478- Bid Form					
ITEM NO.	DESCRIPTION	PLAN QTY.	UNIT	UNIT PRICE	TOTAL COST
101 1	MOBILIZATION	1	LS	\$102,550.00	\$102,550.00
102 1	MAINTENACE OF TRAFFIC	1	LS	\$52,100.00	\$52,100.00
104 10 3	SEDIMENT BARRIER	14,903	LF	\$1.55	\$23,099.65
110 1 1	CLEARING AND GRUBBING	6.1	AC	\$1,060.00	\$6,466.00
110 7 1	MAILBOX, F&I SINGLE	23	EA	\$130.70	\$3,006.10
120 1	REGULAR EXCAVATION	2,890.50	CY	\$4.25	\$12,284.63
120 6	EMBANKMENT	2,646	CY	\$13.65	\$36,117.90
160 4	TYPE B STABILIZATION	8,660	SY	\$7.00	\$60,620.00
285 701	OPTIONAL BASE, BASE GROUP 01 (TYPE B-12.5 ONLY)	5,807	SY	\$23.55	\$136,754.85
327 70 1	MILLING EXIST ASPH PAVT, 1" AVG DEPTH	13,548	SY	\$1.70	\$23,031.60
334 1 13	SUPERPAVE ASPHALTIC CONC, TRAFFIC C	527	TN	\$121.00	\$63,767.00
337 7 82	ASPH CONC FC TRAFFIC C, FC-9.5, PG 76-22	1,080	TN	\$110.30	\$119,124.00
339 1	MISCELLANEOUS ASPHALT PAVEMENT	139	TN	\$135.45	\$18,827.55
536 73	GUARDRAIL REMOVAL	259	LF	\$6.50	\$1,683.50
570 1 2	PERFORMANCE TURF, SOD	22,453.00	SY	\$3.00	\$67,359.00
700 1 11	SINGLE POST SIGN, F&I GROUND MOUNT, UP TO 12 SF	40	AS	\$302.95	\$12,118.00
700 1 60	SINGLE POST SIGN, REMOVE	39	AS	\$33.05	\$1,288.95
701 18 101	PROFILED THERMOPLASTIC, STANDARD-ASPHALT SURFACES, WHITE, SOLID 6"	1.98	GM	\$8,815.00	\$17,453.70
701 18 201	PROFILED THERMOPLASTIC, STANDARD-ASPHALT SURFACES, YELLOW, SOLID 6"	1.92	GM	\$8,815.00	\$16,924.80
701 18 221	PROFILED THERMOPLASTIC, STANDARD-ASPHALT SURFACES, YELLOW, SKIP 6"	0.07	GM	\$3,305.00	\$231.35
710 90	PAINTED PAVEMENT MARKINGS, FINAL SURFACE	1	LS	\$9,365.00	\$9,365.00
711 11 125	THERMOPLASTIC, STANDARD, WHITE, SOLID, 24" FOR STOP LINE AND CROSSWALK	10	LF	\$22.05	\$220.50
711 14 160	THERMOPLASTIC, PREFORMED, WHITE, MESSAGE	1	EA	\$771.15	\$771.15
				Total =	\$785,165.23
*	RAISED PAVEMENT MARKINGS Y/Y (APPROX. 246) AND RAISED PAVEMENT MARKERS MONO DIRECTIONAL YELLOW (APPROX. 6) ARE TO BE INCLUDED IN THE PAINTED PAVEMENT MARKINGS BID ITEM, FINAL SURFACE, LUMP SUM - PAY ITEM 710-90. QUANTITIES PLACED MAY EXCEED THE APPROXIMATE QUANTITY, AND SHOULD BE ACCOUNTED FOR IN THE PREVIOUSLY IDENTIFIED LUMP SUM PAY ITEM				