

**COOPERATIVE PURCHASING AGREEMENT TO PROVIDE MATERIALS, SERVICES, AND
LABOR FOR CITY SEWER INFRASTRUCTURE REHABILITATION PROJECT**

THIS COOPERATIVE PURCHASING AGREEMENT TO PROVIDE CONTINUUM® SOFTWARE, MAINTENANCE, AND SUPPORT SERVICES ("Piggyback Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City") and **ENGINEERED SPRAYED SOLUTIONS, LLC**, a for-profit corporation duly organized and authorized to do business in the state of Florida (EIN: 47-4517008) ("Contractor").

RECITALS:

WHEREAS, after a competitive procurement process Sarasota County, Florida, entered into a Unit Price Contract with Engineered Sprayed Solutions, LLC, to purchase labor, services, and materials for its manhole and structures rehabilitation project (the "Sarasota County Agreement"); and

WHEREAS, in accordance with Chapter 287, Florida Statutes, and the City of Ocala's contracting and procurement policies and procedures, City has the legal authority to "piggyback" the purchase of goods and services as contracted by another governmental entity as a form of inter-governmental cooperative purchasing when seeking to utilize the same or similar services provided for in said contract; and

WHEREAS, City desires to purchase labor, services and materials for its sewer infrastructure rehabilitation project pursuant to essentially the same terms and conditions provided under the Sarasota County Agreement, as applicable and amended by the terms and conditions of this Piggyback Agreement; and

WHEREAS, Contractor agrees to extend the terms, conditions, and pricing of the Sarasota County Agreement to City, subject to the terms and conditions of this Piggyback Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Contractor agree as follows:

TERMS OF AGREEMENT:

1. **RECITALS.** City and Contractor hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **DEFINITIONS.** As used in this Piggyback Agreement, the following terms shall have the meanings specified below:

- A. **Piggyback Agreement**: shall mean this Cooperative Purchasing Agreement to Provide Materials, Services, and Labor for City Sewer Infrastructure Rehabilitation Project as it may from time to time be amended or modified pursuant to its terms and provisions.
 - B. **Sarasota County Agreement**: – shall mean the Purchase Agreement between Sarasota County and Engineered Sprayed Solutions, LLC, dated June 3, 2020, and its exhibits, attached hereto as **Exhibit A – Sarasota County Agreement** and incorporated herein by reference.
3. **INCORPORATION OF SARASOTA COUNTY AGREEMENT.** The Sarasota County Agreement attached hereto as **Exhibit A** is hereby incorporated by reference as if set forth herein in its entirety. However, to the extent that any terms and conditions set forth in the Sarasota County Agreement conflict with any of the amended or supplemental terms and conditions set forth in this Piggyback Agreement, then the amended and supplemental terms and conditions set forth in this Piggyback Agreement shall be given precedence.
4. **AMENDED TERMS AND CONDITIONS.** The following terms and conditions of the Sarasota County Agreement are modified and replaced, in their entirety, as follows:
- A. The terms "Sarasota County," "County," "Sarasota County Government," "Board of County Commissioners," "Clerk of the Circuit Court," and "County's Administrative Agent" shall be replaced and intended to refer to the "City of Ocala."
 - B. **SECTION III(C). TERM.** This Agreement shall become effective and commence on the date of full execution by both parties and continue in effect for a term of **THREE (3) YEARS** thereafter. This Agreement may be renewed for up to **TWO (2)** additional **ONE YEAR (1-Year)** periods upon the written consent of both parties. Any Work assignment commenced prior to the expiration of the term, or any renewal of this Agreement, may be completed after the expiration of the term, provided that the Work Assignment and any extension thereof is authorized by the City Project Manager in advance. In such event, the Agreement shall extend and shall be deemed to have the same termination date as the Work Assignment.

- C. **SECTION XVII. NOTICE PROVISION.** The information for "Contractor Representative" and "County's Administrative Agent" are hereby replaced as follows. All other terms under Section XVII remain unchanged:

If to Contractor: Jim Collier, Project Manager/Estimator
Engineered Sprayed Solutions, LLC
1306 Banana Road
Lakeland, Florida 33810
Phone: 863-577-4821
Email: jcollier@ess-1.net

If to City: City of Ocala
Tiffany Kimball, Contracting Officer
110 SE Watula Avenue, Third Floor
Ocala, Florida 34471
Phone: 352-629-8366 Facsimile: 352-690-2025
Email: tkimball@ocalafl.org

Copy to: Robert W. Batsel, Jr., Esquire
Gilligan, Gooding, Batsel, Anderson & Phalen, P.A.
1531 SE 36th Avenue
Ocala, Florida 34471
Phone: 352-867-7707 Fax: 352-867-0237
Email: rbatsel@ocalalaw.com

- D. **SECTION XVIII TERMINATION.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Document, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.

1. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Contractor to carry out any

obligation, term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Contractor written notice of termination in the manner specified for the giving of notices herein. Any notice of termination given to Contractor by City shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:

- a) Contractor fails to timely and properly perform any of the services set forth in the specifications of the Agreement;
 - b) Contractor provides material that does not meet the specifications of the Agreement;
 - c) Contractor fails to complete the work required within the time stipulated in the Agreement; or
 - d) Contractor fails to make progress in the performance of the Agreement and/or gives City reason to believe that Contractor cannot or will not perform to the requirements of the Agreement.
2. **Contractor's Opportunity to Cure Default.** City may, in its sole discretion, provide Contractor with an opportunity to cure the violations set forth in City's notice of default to Contractor. Contractor shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Contractor to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.
3. **City's Remedies Upon Contractor Default.** In the event that Contractor fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:
- a) City shall be entitled to terminate this Agreement without further notice;
 - b) City shall be entitled to hire another vendor to complete the required work in accordance with the needs of City;
 - c) City shall be entitled to recover from Contractor all damages, costs, and attorney's fees arising from Contractor's default prior to termination; and

- d) City shall be entitled to recovery from Contractor any actual excess costs by: (i) deduction from any unpaid balances owed to Contractor; or (ii) any other remedy as provided by law.
4. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. The Project Manager shall provide written notice of the termination. Upon receipt of the notice, Contractor shall immediately discontinue all work as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Contractor shall be entitled to receive compensation solely for: (1) the actual cost of the work completed in conformity with this Agreement; and/or (2) such other costs incurred by Contractor as permitted under this Agreement and approved by City.
- E. **SECTION XIII(B) DISPUTE RESOLUTION.** In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Marion County, Florida, with the parties sharing equally in the cost of such mediation.
- F. **SECTION XXVII LOCAL HIRING INITIATIVE.** [deleted]
- G. **SECTION XXIX. PUBLIC RECORDS. IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-Mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.**
5. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs

(including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.

6. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
7. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida
8. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided

in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.

9. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
10. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument .
11. **ELECTRONIC SIGNATURE(S).** Contractor, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement on 05 / 12 / 2021.

ATTEST:



Angel B. Jacobs
City Clerk

CITY OF OCALA



Justin Grabelle
City Council President

Approved as to form and legality:



Robert W. Batsel, Jr.

ENGINEERED SPRAYED SOLUTIONS, LLC



Jim Collier, Project Manager
By: _____

(Printed Name)

Title: Project Manager/Authorized
Representative
(VP or Higher)

Contract No.

2020-435

Date:

6/3/2020

UNIT PRICE CONTRACT

This Contract is made and entered into as of the date of execution by both parties, by and between **Sarasota County**, a political subdivision of the State of Florida, hereinafter referred to as the "County" and **Engineered Sprayed Solutions, LLC**, a Florida limited liability company, hereinafter referred to as "Contractor".

WITNESSETH:

The County and Contractor, in consideration of the mutual covenants contained herein, do agree as follows:

I. Materials, Services and Labor: Contractor shall furnish all the labor, services and materials for the **Manhole and Structures Rehabilitation Polyurethane Coating Method Category, Bid# 201918KW**. All work and labor shall be done in accordance with the Contract Documents.

II. Assignment of Work:

A. Contractor shall be engaged to perform a specific project through the issuance of a Work Assignment.

1. Work Assignments may include line items that are not included in the Unit Price Schedule, attached hereto and incorporated herein as Exhibit A, provided the cumulative cost of those non-competed items do not exceed 25% of the total Work Assignment or \$50,000.00, whichever is less. Pricing for non-competed line items will be negotiated between the County and the Contractor.

B. If Contractor declines five Work Assignments within a twelve-month period, the Contract may be terminated at the sole discretion of the County.

C. The total cost of an individual Work Assignment inclusive of all negotiated line items and County authorized contingency shall not exceed the threshold as established by §255.20, F.S.

III. Work Assignment Pricing; Term; Non-Appropriations:

A. The County shall pay the Contractor for the services rendered hereunder and completed in accordance with the terms and conditions of this Contract. In no event shall the County be obligated to pay the Contractor in excess of amounts that are lawfully appropriated for this purpose.

B. The amount for each Work Assignment shall be calculated based upon the extended line item prices set forth in the Unit Price Schedule plus non-

competed items, if any. Contractor acknowledges and agrees that no minimum amount of work or payment is guaranteed under this Contract.

- C. This Contract shall commence immediately upon execution by both the County and the Contractor and shall continue for a period of three years. Thereafter, the Contract may be renewed for two additional successive one-year periods, subject to written agreement by both parties. Any Work Assignment commenced prior to the expiration of the term or any renewal of this Contract may be completed after the expiration date, provided that the Work Assignment and any extension thereof is authorized in accordance with the County Procurement Manual. In such event, the Contract shall extend and shall be deemed to have the same completion date as the Work Assignment.
- D. The County's performance and obligation to pay under this Contract is contingent upon an appropriation of lawfully available funds by the Board of County Commissioners. The County shall promptly notify the Contractor if the necessary appropriation is not made.

IV. Contract Documents: The Contract Documents, together with the Contract comprise the entire agreement between County and Contractor and which are made a part hereof by this reference, consist of the following:

- A. Solicitation and any addenda
- B. General Conditions
- C. Supplemental General and Special Conditions, if any
- D. Technical Specifications
- E. All Work Assignments inclusive of Project Drawings, Specifications and addenda
- F. Work Assignment Purchase Orders
- G. Work Assignment Notice(s) to Proceed
- H. All Contract Modifications

In the event of any conflict among or between Contract Documents, if possible, the conflicting provisions shall be interpreted as a whole in such a way as to carry out the intent of the Contract. If not possible, the order of precedence set forth in General Conditions shall control.

V. Performance and Payment Bond: A Performance and Payment Bond will be required on Work Assignments having a total of \$200,000 or more. A bond may be required on Work Assignments in lesser amounts. If required, the Contractor shall furnish to the County, prior to the commencement of operations under the applicable Work Assignment, a Performance and Payment Bond executed by the Contractor, and a surety company authorized to do business in the State of Florida, in an amount no less than the Work

Assignment price, which bond shall be conditioned upon the successful completion of all work, labor, services, and materials to be provided and furnished hereunder, and the payment of all subcontractors, materialmen, and laborers. The County shall reimburse the Contractor for the actual cost of the Performance and Payment Bond whose cost shall be delineated on the Work Assignment form as a separate line item or included in another line item as noted. The County will only accept a Performance and Payment Bond from a surety with an A.M. Best rating of 'B+' (Very Good) or better. Any such bond shall be provided by the Contractor to the County prior to issuance of a Work Assignment.

VI. Insurance: Contractor shall procure and maintain insurance as specified in Exhibit B, Insurance Requirements, attached hereto and made a part of this Contract.

VII. Contractor's Affidavit: When all Work required by the Work Assignment and contemplated by the Contract as to each Work Assignment, has been completed, inspected, and approved by the County or its duly authorized agent, the Contractor shall furnish to the County the Contractor's affidavit in a form approved by the County. Release(s) of Lien may also be required by the County at its option.

VIII. Payment:

- A. Upon certification and approval by the County or its duly authorized agent, monthly payments will be made to the Contractor upon its application for all services or work completed or materials furnished in accordance with the Contract Documents during the invoice period. Prior to Substantial Completion, monthly payments shall be made on the value of materials furnished or services and work completed up to the time of said application, less a retainage amount, as specified in the General Conditions, 13.5, Retainage. Final payment shall be made as provided in the General Condition, 13.12, Final Payment.
- B. Monthly payment applications shall be submitted each month on the anniversary date of the Notice to Proceed, or a date agreed to by both parties.
- C. Monthly payment applications for less than \$200.00 are not acceptable and will not be processed, except for the final payment application.

IX. Invoicing:

- A. The County shall pay the Contractor through payment issued by the Clerk of the Circuit Court in accordance with the Local Government Prompt Payment Act, §218.70, et seq. F.S., upon receipt of the Contractor's payment application and written approval of same by the County's Administrative Agent indicating that services have been rendered in conformity with the Contract Documents. All payment applications must be

submitted in a form satisfactory to the Clerk of Court, who initiates disbursements.

- B. The Contractor shall submit invoices for payment to the address indicated on the purchase order. Invoices must contain the purchase order number, required identification information, and reflect the Contract prices, terms, and conditions. Invoices containing deviations or omissions will be returned to the Contractor for correction and resubmission. Contractor shall not perform any service or provide products until it has been issued a purchase order number.

X. Time for Performance:

- A. Time is of the essence in the performance of all Work under this Contract and Work Assignments. The Contractor specifically agrees that the time for completion of a Work Assignment shall begin on the date specified on the County-issued Notice to Proceed.
- B. Contractor also agrees no work will begin prior to such date, and that all work to be performed under the provisions of the Work Assignment shall be completed to Substantial Completion within the time frame specified in each individual Work Assignment, plus an additional 30 calendar days after receipt of the deficiency list for Final Acceptance, subject only to delays caused by Force Majeure or approved Contract Modifications.

- XI. Liability of the Contractor:** Pursuant to §725.06(2), F.S., the Contractor shall indemnify and hold harmless Sarasota County Government 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 the Contract.

This Section of the Contract will survive the completion or termination of the Contract.

- XII. Liquidated Damages:** The parties to this Contract agree that time is of the essence in the work provided for herein and that a precise determination of actual damages which would be incurred by the County for delay in the completion of the work provided for herein, aside from the additional cost of inspection and supervision, would be difficult to ascertain. Accordingly, the parties to the Contract agree that the liquidated damages for those items of damage not otherwise provided for by this Contract, for each and every day that the time consumed in completing the work provided for in the Work Assignment documents exceeds the time(s) allowed therefore, shall be the amount(s) per day as stipulated in the Work Assignment, including Saturdays, Sundays, and legal holidays. The parties specifically agree that the liquidated damages provided for herein do not constitute a penalty. Furthermore, since the additional cost of inspection and supervision arising from a delay is not

difficult to ascertain, it is agreed that the Contractor shall pay, in addition to the liquidated damages provided for herein, all expenses for inspection and supervision occasioned by the failure of the Contractor to complete the work within the time(s) fixed for completion herein as specified in the Work Assignment(s). The amount(s) of liquidated damages together with the additional costs for inspection and supervision occasioned by the Contractor's delay will be deducted and retained out of the monies payable to the Contractor. If not so deducted, the Contractor and sureties for the Contractor shall be liable therefore. The amount of liquidated damages to be assessed for each calendar day that Substantial Completion for each individual Work Assignment is delayed beyond the required date of Substantial Completion shall be negotiated at the time of the Work Assignment between the Administrative Agent and the Contractor. The amount of liquidated damages to be assessed for each calendar day that Final Acceptance for each individual Work Assignment is delayed beyond the required date of Final Acceptance shall be 25% of the Substantial Completion amount.

XIII. Contractor's Representations for Work Assignments: Contractor makes the following representations regarding each Work Assignment:

- A. Contractor has familiarized itself with the nature and extent of the Contract Documents, work, locality, all local conditions, and federal, state, and local laws, ordinances, rules, and regulations that in any manner may affect cost, progress, or performance of work.
- B. Contractor has investigated and is fully informed of construction and labor conditions, potential obstructions to be encountered, character, quality, and quantities of work to be performed, materials to be furnished, and requirements of the plans where supplied in the Contract Documents.
- C. Contractor has given County written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract and the written resolution thereof by County is acceptable to the Contractor.

XIV. Contractor's Representations for the Contract:

- A. Contractor declares that submission of a bid for the work constitutes an incontrovertible representation that the Contractor has complied with every requirement of this Solicitation.
- B. Contractor represents that Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of work.
- C. Contractor assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age or sex, in any activity under this Contract.

XV. Public Entity Crimes: Pursuant to §287.133(3)(a), F.S., 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 §287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

XVI. Independent Contractor: The Contractor is, and shall be, in the performance of all work, services and activities under this Contract, an independent contractor. Contractor is not an employee, agent or servant of County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees of the County. The Contractor shall be solely responsible for providing benefits and insurance to its employees.

XVII. Notice Provision: Any notices of default or termination shall be sent by the parties via hand delivery, United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below.

Contract clarifications or questions regarding the interpretation of plans and/or specifications not involving: (a) any Contract claim and/or dispute, (b) questions of time not involving extension, delay, or reduction of time, (c) monetary or compensatory issues, (d) fully executed IFCA's (Interim Field Change Agreement) and/or (e) material changes to the Contract, shall be sufficiently given if delivered personally or sent via email, or U.S. mail, postage prepaid, addressed as follows.

Contractor Representative:

County's Administrative Agent:

Name	<u>Jim Collier</u>
Title	<u>Project Manager/Estimator</u>
Address	<u>1306 Banana Road Lakeland, FL 33810</u>
Phone	<u>(863) 577-4821</u>

Name	<u>Lori Crick</u>
Title	<u>Business Professional III</u>
Address	<u>1001 Sarasota Center Blvd Sarasota, FL 34240</u>
Phone	<u>941-275-9192</u>

E-mail jcollier@ess-1.netE-mail lcrick@scgov.net

XVIII. Termination: Termination of the Contract, for either Cause or for Convenience shall be, as stated in General Conditions, Article 6.0, County's Rights. The County reserves the right to terminate any Work Assignment without terminating the Contract or any other uncompleted Work Assignments.

XIX. Waivers: Failure to insist on strict performance of any covenant, condition, or provision of this Contract by a party, its successors or assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this Contract.

XX. Modifications: This Contract may be modified only by instrument in writing and signed by the parties.

XXI. Counterparts: This Contract may be executed in any number of counterparts, any one of which may be taken as an original.

XXII. No Third Party Rights: The parties hereto do not intend nor shall this Contract be construed to grant any rights, privileges or interest to any third party.

XXIII. Remedies: The parties hereto agree that remedies for damages or any other remedies provided for herein shall be construed to be cumulative and not exclusive of any other remedy otherwise available under law.

XXIV. Access to Records: The Contractor shall maintain books, records, documents, and other materials ("Records") directly pertaining to or connected with the services performed under this Contract. Such Records shall be available and accessible at the Contractor's offices for the purpose of inspection, audit, and copying during normal business hours by the County, or any of its authorized representatives. Such Records shall be retained for a minimum of ten (10) County fiscal years (October 1-September 30) after completion of the Contract.

XXV. Severability: If any provision of this Contract is found by a court of competent jurisdiction to be in conflict with an applicable statute or ordinance, or is otherwise unenforceable, then such provision shall be deemed null and void to the extent of such conflict, but shall not invalidate any other provision of this Contract.

XXVI. Dispute Resolution:

- A. To the extent Chapter 558, F.S. is applicable, the parties expressly opt out of the requirements of Chapter 558, F.S., within the meaning of §558.005(1), F.S.

- B. In the event of a dispute or claim arising out of this Contract, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Sarasota County, Florida, with the parties sharing equally in the cost of such mediation.
- C. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation.
- D. Any dispute, action or proceeding arising out of or related to this Contract will be exclusively commenced in the state courts of Sarasota County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- E. The parties hereby waive all rights to trial by jury for any litigation concerning this Contract.
- F. This Contract and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- G. Unless otherwise agreed in writing, the Contractor shall be required to continue its services and all other obligations under this Contract during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.

XXVII. Local Hiring Initiative: In accordance with Sarasota County's Local Hiring Initiative Resolution No. 2013-127, Contractor is encouraged to work with CareerSource Suncoast, or any other agency designated by the State of Florida as a workforce development agency, to increase employment opportunities for local residents. Local residents are defined as residents of Sarasota County, but that definition may be expanded to include Manatee and Charlotte Counties if the requisite skill-set is not available in Sarasota County. Resolution No. 2013-127 establishes an aspirational goal for contractors and subcontractors to hire 15% minimum local residents as the new hires for construction and construction related projects.

The Contractor is hereby required to include the completed Local Hiring Initiative Participation Form as part of the monthly pay requests.

XXVIII. Scrutinized Companies: §287.135, F.S., prohibits agencies from contracting with companies for goods or services that are on the Scrutinized Companies that Boycott Israel List, or with companies that are engaged in a boycott of Israel, and from contracting with companies for goods or services of

\$1,000,000 or more that are on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are engaged in business operations in Cuba or Syria. The lists are created pursuant to §215.473 and §215.4725, F.S. Contractor certifies that the organization is not listed on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria, and understands that pursuant to §287.135, F.S., the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs. In accordance with §287.135, F.S., the County may terminate this Contract if a false certification has been made, or the Contractor is subsequently placed on any of these lists or engages in a boycott of Israel or is engaged in business operations in Cuba or Syria.

XXIX. Public Records:

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:

**Sarasota County
Public Records office
1660 Ringling Blvd.
Sarasota, FL 34236**

Phone: 941-861-5886

Email: publicrecords@scgov.net

XXX. Entire Contract: This Contract constitutes the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of the Contract. The Contractor recognizes that any representations, statements, or negotiations made by County representatives do not suffice to legally bind the County in a contractual relationship unless they have been reduced to writing and signed by an authorized County representative. This Contract shall inure to the benefit of and be binding upon the parties, their respective assigns, and successors in interest.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date last below written.

WITNESS:

Engineered Sprayed Solutions, LLC:

Signed By: Melissa Kimball

Signed By: [Signature]

Print Name: Melissa Kimball

Print Name: Lewis G. Collier

Title: Owner / MGR

Date: 5-15-2020

SARASOTA COUNTY

BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA

By: [Signature]
Chair

Date: 6/3/2020

ATTEST:

KAREN E. RUSHING, Clerk of the Circuit
Court and Ex-Officio Clerk of the Board
of County Commissioners

By: [Signature]
Deputy Clerk

Approved as to form and correctness:

By: [Signature]
County Attorney OMM

**EXHIBIT A
UNIT PRICE SCHEDULE**

CONTRACT# WRS/210309

COATING METHOD - POLYURETHANE			
UNIT PRICE CONTRACT FOR MANHOLE & STRUCTURES REHABILITATION, BID #201918KW			
Item No.	Description	Unit	Unit Price(\$)
A - MANHOLE & STRUCTURES COATING - POLYURETHANE			
1	Polyurethane Resin Based Coating 48" Diameter 1/8" Minimum Thickness	VF	\$226.00
2	Polyurethane Resin Based Coating 48" Diameter 1/4" Minimum Thickness	VF	\$251.00
3	Polyurethane Resin Based Coating 48" Diameter 1/2" Minimum Thickness	VF	\$314.00
4	Polyurethane Resin Based Coating 48" Diameter 1" Minimum Thickness	VF	\$502.00
5	Polyurethane Resin Based Coating 60" Diameter 1/8" Minimum Thickness	VF	\$283.00
6	Polyurethane Resin Based Coating 60" Diameter 1/4" Minimum Thickness	VF	\$314.00
7	Polyurethane Resin Based Coating 60" Diameter 1/2" Minimum Thickness	VF	\$392.00
8	Polyurethane Resin Based Coating 60" Diameter 1" Minimum Thickness	VF	\$628.00
9	Structure Polyurethane Resin Based Coating 1/8" Minimum Thickness	SF	\$19.00
10	Structure Polyurethane Resin Based Coating 1/4" Minimum Thickness	SF	\$21.00
11	Structure Polyurethane Resin Based Coating 1/2" Minimum Thickness	SF	\$26.00
12	Structure Polyurethane Resin Based Coating 1" Minimum Thickness	SF	\$40.00
B - MANHOLE & STRUCTURES REPAIR			
13	Removal of Existing Manhole or Wetwell Lining System (Excluding T- Lock or Similar Liner)	SF	\$9.00
14	Removal of Existing Manhole or Wetwell T-Lock or Similar Lining System	SF	\$22.00
15	Patching & Profiling - Cementitious Grout Only	SF	\$12.00
16	Infiltration Control - Cementitious or Chemical Grout	GAL	\$125.00
17	Bonding Compound	GAL	\$55.00
18	Bench and Invert Channel Repair	LF	\$150.00
19	Chimney Repairs	VF	\$150.00
20	Chimney Replacement	VF	\$675.00
21	Manhole Rim & Cover Replacement - Paved Areas	EA	\$1,150.00
22	Manhole Rim & Cover Replacement - Grassed Areas	EA	\$950.00

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Item No.	Description	Unit	Unit Price(\$)
23	Seam Extrusion Welding	LF	\$300.00
24	Fusion Welding of Pipe Boot	EA	\$900.00
25	Install Rain Water Protector	EA	\$110.00
C - CLEANING, TELEVISIONING AND ASSESSMENT			
26	Cleaning Manholes	EA	\$150.00
27	Cleaning Structures	EA	\$1,000.00
28	Televising (USB)/Photographs(USB) Manholes	EA	\$75.00
29	Televising (USB)/Photographs(USB) Structures	EA	\$300.00
30	GPS Mapping of County Requested Manholes	EA	\$150.00
D - ANCILLARY SERVICES			
31	Bypass Pumping - 4" Pump	DAY	\$2,500.00
32	Bypass Pumping - 6" Pump	DAY	\$2,900.00
33	Bypass Pumping - 8" Pump	DAY	\$3,900.00
34	Bypass Pumper Truck	HOUR	\$290.00
35	Bypass Vac-Truck	HOUR	\$290.00
36	Maintenance of Traffic (MOT) - Arterial	EA	\$1,250.00
37	Maintenance of Traffic (MOT) - FDOT	EA	\$1,500.00
38	Emergency Mobilization	EA	\$750.00

EXHIBIT B INSURANCE REQUIREMENTS

For purposes of this Exhibit B, the terms "Vendor," "Contractor" and "Consultant" shall be interchangeable and the terms "Contract," "Term Contract" and "Agreement" shall be interchangeable.

CONTRACTOR'S INSURANCE

Contractor shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Contract, insurance coverage (including endorsements) and limits as described herein. These requirements, as well as the County's review or acceptance of insurance maintained by Contractor, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

Insurance requirements itemized in this Contract and required of the Contractor shall extend to all subcontractors to cover their operations performed under this Contract. The Contractor shall be responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.

Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VII or better.

Each insurance policy required by this Contract shall apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.

The Contractor shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Contract and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject.

Contractor shall furnish Certificates of Insurance to the County Administrative Agent evidencing the types and amounts of coverage, including endorsements, required by this Contract prior to commencement of work and prior to expiration of the insurance contract, when applicable. Such Certificate(s) of Insurance shall, to the extent allowable by the insurer, include a minimum thirty (30) day notice of cancellation (10 days for non-payment of premium) or non-renewal of coverage. Notwithstanding these notification requirements, the Contractor will be required to provide County with at least 5 days prior written notice of any policy cancellation or non-renewal.

The County reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of this Contract. County reserves the right, but not the obligation, to review and reject any insurer providing coverage due to its poor financial condition or failure to operate legally.

EXHIBIT B INSURANCE REQUIREMENTS

- A. WORKERS' COMPENSATION:** Contractor shall maintain Workers' Compensation insurance in accordance with Florida Statutes, Chapter 440. Employers Liability to be included with a minimum limit of \$500,000.00 per accident/per disease/per employee. If work is to be performed over or adjacent to navigable water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be included.

In the event the Contractor has "leased" employees, the Contractor or the employee leasing company must provide evidence of a Workers' Compensation policy for all personnel on the worksite.

- B. COMMERCIAL GENERAL LIABILITY:** Contractor shall maintain Commercial General Liability per ISO form CG0001 or its equivalent, including but not limited to coverage for premises and operations, personal injury, products & completed operations, liability assumed under an insured contract, and independent contractors with limits of not less than \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate covering all work performed under this Contract. There shall be no exclusions for explosion, collapse and underground hazards.

Contractor agrees to endorse **Sarasota County Government** as an additional insured on the Commercial General Liability coverage.

- C. BUSINESS AUTOMOBILE LIABILITY:** Contractor agrees to maintain Business Automobile Liability with limits not less than \$1,000,000.00 combined single limit for each accident covering all Owned, Non-Owned & Hired automobiles used in the performance of this Contract. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

If the Contractor is shipping a product via common carrier, the contractor shall be responsible for any loss or damage sustained in delivery/transit.

- D. UMBRELLA/EXCESS LIABILITY:** Contractor agrees to maintain Umbrella or Excess Liability with limits not less than \$2,000,000.00 each occurrence and in the aggregate. Coverage shall follow the terms of the underlying insurance, including the additional insured provisions.

- E. POLLUTION LIABILITY:** Contractor shall maintain Pollution Liability coverage with limits not less than \$1,000,000 per claim/occurrence for bodily injury, property damage and environmental damage from sudden and gradual occurrences resulting from pollution conditions arising out of the work or services performed under this Contract (including any transportation and disposal of hazardous materials or pollutants). Coverage shall include, but not be limited to, third party liability, clean up, corrective action including assessment, remediation and defense costs. If coverage is written on a claims-made basis: a. Any retroactive date shall precede the effective date of this Contract; b. Contractor shall provide certificates of insurance evidencing the required coverage for a period of two years after final payment under this Contract is made, or provide

EXHIBIT B
INSURANCE REQUIREMENTS

evidence showing Contractor has obtained a two year extended reporting period endorsement.

- F. BUILDERS RISK:** Contractor shall maintain, at Contractor's expense, and keep in force during the term of this Contract, Builder's Risk insurance on an all risks of direct physical loss basis, including without limitation, earth movement, flood and windstorm, for an amount equal to the full Contract Amount plus all subsequent change orders on a replacement cost basis. Insured property shall include portions of the work located away from the site but intended for use at the site, and shall also cover portions of the work in transit.
- a. Such insurance shall be maintained until final payment has been made or until no other person or entity, other than the County has an insurable interest in the property required to be covered.
 - b. Policy shall be endorsed such that the insurance shall not be cancelled or lapse because of any partial use or occupancy of the County.
 - c. **Sarasota County Government**, the Contractor and its subcontractors shall be included as Insureds on the policy.
 - d. Waiver of subrogation is to apply against all parties named as Insureds, but only to the extent the loss is covered.
 - e. Contractor is responsible for the payment of all policy deductibles. Maximum deductible amounts shall not be greater than \$25,000 except for perils of earthquake, flood and windstorm, unless otherwise approved by the County.

TITLE	FOR SIGNATURE: Piggyback Contract for Sewer Rehab projects
FILE NAME	FOR SIGNATURES - ...ty Sewer Infr.pdf
DOCUMENT ID	8c84b1609128e7bc2d80519f9d174e339200eb56
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
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Document History



04 / 28 / 2021
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Sent for signature to Jim Collier, Project Manager (jcollier@ess-1.net) and Rob Batsel, Esquire (rbatsel@ocalalaw.com) from tkimball@ocalafl.org
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04 / 29 / 2021
10:37:33 UTC-5

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04 / 29 / 2021
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04 / 30 / 2021
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04 / 30 / 2021
13:03:15 UTC-5

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IP: 216.255.247.51



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TITLE	FOR COUNCIL SIGNATURE - Piggyback Agreement to Provide.....
FILE NAME	FOR COUNCIL SIGNA...or for City S.pdf
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05 / 12 / 2021
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