



INFORMATION TECHNOLOGY DEPARTMENT
2725 Judge Fran Jamieson Way, C203
Viera, FL 32940
(321) 617-7395

TO: Kimberly Powell, Clerk to the Board

FROM: Alice Colon, Admin Assistant, Information Technology Dept.

DATE: July 2022

RE: Resulting Contract from RFP P7-21-26 / SAP HANA Database Migration

Attached is a copy of the signed contract between Brevard County BoCC and vendor Phoenix Business Consulting, Inc. Also attached is a copy of the memo on the Board's approval during regular session on May 4, 2021, Item F.23.; a copy of the Notice of Award from our Purchasing Department; and a copy of the Contract Review and Approval Form.

Thank you.

/ac

Attachments

CONTRACT – HANA SOFTWARE UPGRADE CONTRACT

This is a Contract entered into the date of last signature below, by and between Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "County", and Phoenix Business Consulting, Inc., a business authorized to do business in the State of Florida and having its principal address at 6021 Midnight Pass Rd Unit 3, Sarasota, FL 34242, hereinafter referred to as the "Contractor".

Recitals

Whereas, the County issued R.F.P. 7-21-26 SAP HANA Software Upgrade; and

Whereas, the County awarded the Contractor after a competitive selection process and in accordance with the County's procurement rules and regulations; and

Whereas, the Contractor agrees to provide such services in accordance with the terms and conditions of this Contract.

Now, therefore, in consideration of the mutual agreement hereinafter contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the the parties hereby covenant as follows:

GENERAL TERMS AND CONDITIONS

Section 1 - Recitals

The foregoing recitals are true and are incorporated herein by this reference.

Section 2 - Definitions

The words and expressions (or pronouns used in their stead) defined in this Contract shall, wherever they appear in the Contract, be construed as follows unless a different meaning is clear from the context.

Addenda: shall mean any additional solicitation provisions issued in writing by the County prior to the date and time for bid openings.

Bid Proposal: shall mean the offer of proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

Bidder: shall mean any person, firm or corporation submitting a Bid for the Work.

Board of County Commissioners: shall mean the Board of County Commissioners of Brevard County, Florida, or their duly authorized representative(s).

Change Order: shall mean an order to the Contractor, approved by the County, authorizing an addition, deletion, or revision in the Work, or an adjustment in the Contract and/or Task Order, or the Contract Performance Period or Completion Time issued after execution of the Contract or issuance of a Task Order.

Completion Time: shall mean the number of days specified in a Task Order for completion of the Work in that Task Order.

Contract: shall mean the written agreement between the County and the Contractor regulating the Work to be performed. This Contract shall include the County's R.F.P., along with any addenda or modifications thereto, as well as the Contractor's responsive bid. In the case of any conflict in this agreement between the parties, the order of precedence shall be: (1) any Change Order; (2) any Task Order or Statement of Work; (3) this Contract, with any modifications or amendments thereto; (4) the County's R.F.P., along with any addenda or modifications thereto; (5) the Contractor's responsive bid; (6) any other documentation.

Contractor: shall mean Phoenix Business Consulting, Inc., and its agents, employees, officers, successors, personal representatives, executors, administrators, and assigns.

Contract Performance Period: shall mean the overall performance period of this Contract.

County: shall mean the Board of County Commissioners, Brevard County, Florida, or their duly authorized representative(s), for whom the Contract Work is being performed.

Date of Execution: This contract's date of execution is the date last signed by the Parties.

Day: shall mean one calendar day when used in the Contract.

Defective Work: shall mean (a) Work that is unsatisfactory, deficient or damaged, does not conform to the Contract, or does not meet the requirements of any inspection test or approval, or (b) Work associated with punch list items that the Contractor fails to complete within a reasonable time after issuance of the punch list by the Project Manager.

Final Acceptance: shall mean acceptance of the Work specified in an individual Task Order by the County upon the expiration of the warranty period as stated in the Contract.

Notice: shall mean written Notice delivered to an authorized representative identified herein in person or by mail.

Project: A specific description of Work to be performed at a Site under the scope of this Contract.

Specifications: shall mean the parts of the Contract identified as "Specifications" and organized into Divisions. The Specifications include general requirements and technical descriptions of materials, equipment, construction systems, standards and workmanship. The term "Technical Provisions" where used in the Contract refers to the Specifications.

Subcontractor: shall mean any person, firm, or corporation other than employees of the Contractor that contract with the Contractor to furnish, or actually furnishes labor, materials and/or equipment for the work.

Task Order or Statement of Work: shall mean any order issued against the Contract for construction work in accordance with its terms and conditions.

Work: shall mean any and all obligations, duties, and responsibilities necessary to the successful completion of the construction assigned to or undertaken by the Contractor under the Contract, including the furnishing of all labor materials, equipment, and other incidentals.

Section 3 - Scope of Work

This Work consists of to migrate the Brevard County's Board of County Commissioners SAP database from Oracle 18.6.0.0.0 to SAP HANA within their SAP environment for the following systems: SAP ERP ECC 6.0 Business Suite Application Servers (Dev, QA and Production). The County has performed the exercise of migrating the database in their Sandbox environment. BSI Tax Factory servers (2), Adobe Servers (2), Solution Manager. Attachment A Scope of Work Pricing and Scope of Work Task List.

Section 4 - Term of Contract

The initial term shall begin upon the date of last signature below, hereinafter the "Effective Date", and shall continue until the Work outlined herein is completed.

Section 5 - Compensation

Compensation for Work shall be in accordance with Attachment A: Scope of Work Pricing. Compensation schedules may be adjusted after the third year of the Contract



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 837-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

May 5, 2021

MEMORANDUM

TO: Jeff McKnight, Information Technology Director

RE: Item F.23., Approval to Advertise and Request for Proposals for the Technical SAP HANA Database Migration

The Board of County Commissioners, in regular session on May 4, 2021, authorized the development and advertisement of a Request for Proposal (RFP) for SAP HANA Database Migration; approved the Selection and Negotiation Committee comprised of Lois Boisseau, Information Technology Assistant Director, Wally Phillips, Engineer III- Systems Administration Lead, and Pam Wallace, Special Projects Coordinator, Budget Office SAP Superuser; authorized the County Manager to execute the resulting contract(s) and contract-related documents upon review and approval by the County Attorney's Office, Risk Management, and Purchasing Services; and authorized the County Manager to approve necessary Budget Change Requests, and to approve negotiated contract options.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/ns

cc: Finance
Budget
County Attorney
Risk Management
Purchasing



Purchasing Services
 2725 Judge Fran Jamieson Way
 Building C, Room 303
 Viera, Florida 32940

NOTICE OF AWARD
 April 5, 2022
 RFP#7-21-26 / SAP HANA Software Upgrade

PROCUREMENT ANALYST: Stephanie Reynolds

<u>VENDOR</u>	<u>VENDOR CITY/STATE</u>	<u>MEETS MINIMUM REQUIREMENTS</u>	<u>ITEMS AWARDED</u>	<u>NEGOTIATED COST</u>
Phoenix Business Consulting	Sarasota, FL	Yes	All	\$189,000.00 Project Manager: \$150/hr SAP Technical: \$130/hr
Mygo Consulting, Inc.	Naperville, IL		Non-Responsive	
Quintel-MC, Inc.	Greenwood Village, CO		Non-Responsive	
SoftSages Technology	Tampa, FL		Non-Responsive	
V3IT Consulting, Inc.	Naperville, IL		Non-Responsive	

☐ BOARD AWARD--AGENDA ATTACHED
☒ APPROVED AWARD (NON-BOARD AGENDA): Katherine Wall
 (Per Sections III.E. & III.I. & J., BCC-25, PROCUREMENT) Katherine Wall, Central Services Director

- ☒ Award to best-ranked proposer, minimum three responses received.
☐ Award to best-ranked proposer, less than three responses received:

AWARDED BY A COMMITTEE CONSISTING OF: Lois Boisseau, Assistant Information Technology Director; Daniel Miller, Senior Systems Administrator; Pam Wallace, Special Projects Coordinator

FOR PURCHASING USE ONLY:

☒ ONE-TIME PURCHASE

☐ ANNUAL BID:

EFFECTIVE DATE: _____ ENDING DATE: _____
 RENEWAL OPTION ☐ One year ☐ Other (fill in) _____

- ☐ Prompt Payment Discount Offered ☐ Yes _____ (Terms) ☒ NO
☐ Performance and payment bonds received with construction contract documents.
☐ Release Cashier's or Certified Check Received for Bid Deposit on Bids

SPECIAL INSTRUCTIONS TO AWARDED VENDOR:

- ☒ Please provide certificate of insurance.
☐ Please provide performance and payment bonds as required.
☐ OTHER:

SW

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Phoenix Business Consulting		2. Amount:
3. Fund/Account #: 5011-389112	4. Department Name: Information Technology	
5. Contract Description: RFP#7-21-26 / SAP HANA Software Upgrade		
6. Contract Monitor: Lois Boisseau, Assistant I.T. Director	8. Contract Type: CONSULTANT	
7. Dept/Office Director: Jeff McKnight, I.T. Director		
9. Type of Procurement: Request for Proposal (RFP)		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jeff McKnight <small>Digitally signed by Jeff McKnight Date: 2022.05.26 11:07:59 -04'00'</small>
Purchasing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Wall, Katherine <small>Digitally signed by Wall, Katherine Date: 2022.06.30 12:04:48 -04'00'</small>
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Wilson, Shannon <small>Digitally signed by Wilson, Shannon Date: 2022.06.13 08:56:57 -04'00'</small>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Esseesse, Alexander <small>Digitally signed by Esseesse, Alexander Date: 2022.06.02 12:53:13 -04'00'</small>

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

upon mutual consent of the parties. Compensation adjustment shall be based on material cost variation or other relevant economic conditions, sufficiently documented by the requesting party. Either party may request a compensation adjustment. Failure to agree upon compensation adjustments shall constitute mutually agreed upon termination of this Contract. The request for compensation adjustment must be made ninety days prior to the anniversary date of this Contract.

Section 6 - Indemnification

The County shall be held harmless by the Contractor against any and all claims for and related in any way to bodily injury, sickness, disease, death, personal injury, damages to property of any kind (loss of use of any property or assets resulting therefrom), damages, fines, penalties, injuries, information security incident, schedule delay claims of any kind, including but not limited to loss of efficiency or productivity, arising out of or resulting from the performance of the products or services for which the County is Contracting hereunder, to the extent caused by the negligent, willful, recklessness, or intentional wrongful conduct, acts, or omissions of the Contractor, or any of their agents or employees, including sub-contractors.

The Contractor agrees to fully indemnify the County and pay the cost of the County's legal defenses, including fees of attorneys as may be selected by the County, for all claims described in the hold harmless clause above. Such payment on behalf of the County shall be in addition to any and all other legal remedies available to the County and shall not be considered to be the County's exclusive remedy. It is agreed by the parties hereto that specific consideration has been received under this Contract for this hold harmless/indemnification provision. This indemnification shall survive the termination of this Contract. The County's indemnity and liability obligations hereunder shall be subject to the County's common law right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing in this Contract is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of sovereign immunity of Brevard County.

Section 7 - Insurance Requirements

The Contractor providing services under this Contract will be required to procure and maintain, at their own expense and without cost to the County, until final acceptance by the County of all products or services covered by the purchase order or Contract, the following types of insurance. The policy limits required are to be considered minimum amounts.

- A. **General Liability Insurance** policy with a \$1,000,000 combined single limit for each occurrence to include the following coverage: Operations, Products and Completed Operations, Personal Injury, Contractual Liability covering this Contract, and Explosion, Collapse and Underground ("XCU") hazard.
- B. **Auto Liability Insurance** which includes coverage for all owned, non-owned and hired vehicles with a \$1,000,000 combined single limit for each occurrence.
- C. **Cyber Liability Coverage** must be afforded in an amount of not less than \$1,000,000 per occurrence for negligent retention of data as well as notification and related costs for actual information security incidents.
- D. **Workers' Compensation and Employers Liability Insurance** as required by Florida Statutes, Chapter 440.

The Contractor shall provide certificates of insurance to the County demonstrating that the aforementioned insurance requirements have been met prior to the commencement of work under this Contract and upon insurance renewal annually. Insurance carriers providing coverage required herein must be licensed or authorized to conduct business in the State of Florida and must possess A.M. Best's Financial Strength Rating of A-Class VIII or better. The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured (a waiver of subrogation in lieu of additional insured status on the Workers' Compensation policy is acceptable) and that these policies may not be canceled or modified without thirty days prior written notice to the County.

The insurance coverage enumerated above constitutes the minimum requirements and shall in no way lessen or limit the liability of the Contractor under the terms of the Contract. Sub-contractor's insurance shall be the responsibility of the Contractor.

Section 8 - Information Security Incident Response. In the event that Contractor becomes aware of an information security incident, the Contractor shall:

- A. Promptly notify the County, in writing, of the occurrence of such information security incident, no more than twenty-four (24) hours after becoming aware of said information security incident;
- B. Investigate such information security incident and conduct an analysis of the cause(s) of such information security incident;
- C. Provide periodic updates of any ongoing investigation to the County;
- D. Develop and implement an appropriate plan to remediate the cause of such information security incident, to the extent that such cause is within Contractor's, or any of its affiliates or subcontractors, control;
- E. Provide:
 - 1. Notification to potentially affected persons;
 - 2. Credit monitoring services;
 - 3. Identification protection services;
 - 4. Establish and operate a call center;
 - 5. Notification to any and all regulatory authorities; and
 - 6. Other functions, services, or penalties as may be required by law.
- F. Should it be determined that such information security incident was the responsibility of the County, the County shall reimburse Contractor for its reasonable out-of-pocket costs to investigate and remediate such information security incident.

Both Contractor and the County shall be responsible for complying with all applicable federal and state regulations, statutes, rules and/or requirements in effect at the time of any information security incident, as may be amended or revised, that are applicable to any and all of the County's Data which is in the control of Contractor or any of its affiliates or subcontractor.

Section 9 - Warranty

The Contractor shall extend to the County the same warranty on all materials, programs, and equipment furnished under this Contract, which the manufacturer extends to the Contractor, or purchasers, whichever is greater. In the absence of any warranty language in a Task Order or Statement of Work, Contractor warrants that all services performed pursuant to this Contract will be performed in accordance with the

general standards and practices of the information technology industry in existence at the time the services are being performed.

Section 10 - Attorney's Fees; Waiver of Jury Trial

In the event of any legal action to interpret or enforce the terms of this Contract or any provision hereof, each party shall bear its own attorney's fees and costs and **ANY TRIAL SHALL BE NON-JURY.**

Section 11 - Governing Law

This Contract shall be governed, interpreted, and construed according to the laws of the State of Florida.

Section 12 - Compliance with Statutes

It shall be the Contractor's responsibility to be aware of and comply with all Federal, State, and local laws.

Section 13 - Venue

Venue for any legal action brought by any party to this Contract, to interpret, construe, or enforce this Contract shall be in a court of competent jurisdiction in and for Brevard County, Florida.

Section 14 – Subcontracting

It is understood that the Contractor will be solely responsible for the assigned work. Any subcontractors must be previously approved by the County in writing. The Contractor will not employ any subcontractor, other person or organization against whom the County may have reasonable objections, nor will the Contractor be required to employ any subcontractor against whom it has reasonable objection. The Contractor will not make any substitution for any subcontractor who has been accepted by the County, unless the County determines that there is good cause for doing so.

Nothing in the Contract shall create, nor shall it be interpreted to create, privity or any other contractual relationship whatsoever between any subcontractor and the County, or any person or business entity except the Contractor, or any obligation on the part of the County to pay or to see to the payment of any monies due any subcontractor, except as may otherwise be required by law. The County may furnish to any subcontractor, to the extent practicable, evidence of amounts paid to the Contractor on account of specific

Work done. The Contractor agrees to specifically bind every subcontractor to the applicable terms and conditions of the Contract for the benefit of the County, including, but not limited to, requiring any subcontractor to indemnify and hold harmless the County under the same terms and conditions as outlined in Section 6.

Section 15 – Assignability

Any Work issued pursuant to this Contract is not assignable without the prior written approval of the County.

Section 16 - Non-Exclusivity

The parties hereto specifically agree that this is a non-exclusive agreement and that Contractor may also do such work for any other entity.

Section 17 - Termination

- A. **Without Cause.** Each party retains the right to terminate the Contract, in part or in its entirety, without cause, upon thirty days prior written notice. In the event of termination, the Contractor shall not be entitled to any damages, liquidated or otherwise, caused as a result of such termination.
- B. **With Cause.** If either party believes that the other party has failed in any material respect to perform its obligations under this Contract, then that party may provide written notice to the other party's representative describing the alleged failure in reasonable detail. If the alleged failure relates to a failure to pay any sum due and owing under this Contract, then the breaching party shall have fifteen (15) calendar days after notice of such failure to cure the breach. If the Contractor fails to complete the Work as directed in a Task Order or Statement of Work, but still has additional time remaining under the Task Order or Statement of Work, then the Contractor shall have until the established deadline to complete the work, plus fifteen (15) calendar days if agreed to in writing by the County. If the breaching party (1) does not cure a material failure, or (2) if the breach is not one that can be reasonably cured within the established time period, then the non-breaching party may terminate this Agreement, in whole or in part, for cause, by providing written notice to the breaching party.
- C. Any Work completed prior to the date of termination shall, at the option of the County, become the property of the County. The County is only responsible for

payment of Work completed, inspected and accepted prior to the effective date of termination, excluding any and all anticipated supplemental costs, administrative expenses and profit for uncompleted Work.

- D. Contractor will continue to perform services during the notice period unless otherwise mutually agreed upon by the parties in writing. In the event the County provides the notice of termination and directs the Contractor not to perform the services through the notice period, the County agrees to pay the Contractor an amount equal to the amount normally due to the Contractor for the notice period.
- E. Upon termination by either party, the County shall pay the Contractor for all services performed and charges and expenses reasonably incurred by the Contractor in connection with the services provided under this Contract through the date of termination.

Section 18 - Independent Contractor

The Contractor shall perform the conditions of this Contract as an independent Contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Contract shall be in any way construed to constitute the Contractor, or any of its agents or employees, as an agent, employee or representative of the County.

Section 19 - Right to Audit Records

In performance of this Contract, the Contractor shall keep books, records, and accounts of all activities related to this Contract in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Contractor in conjunction with this Contract, and the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of the County. The Contractor shall retain all documents, books and records for a period of five years after completion or termination of this Contract, unless such records are exempt from Section 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes.

Section 20 - Public Records

The County is subject to the Florida Public Records Law, Chapter 119, Florida Statutes, and all other applicable Florida Statutes. If the materials provided by the Contractor do

not fall under a specific exemption under Florida or federal law, materials provided by the Contractor to the County would have to be provided to anyone making a public records request. It will be the Contractor's duty to identify the information it deems is exempt under Florida or federal law, and identify the statute, by number, that exempts such information.

Should any person or entity make a public request of the County, which requires or would require the County to allow inspection or provide copies of records which the Contractor maintains are exempt from Public Records Law or are confidential, it shall be the Contractor's obligation to provide the County within 24 hours (not including weekends and legal holidays), of notification by the County to the Contractor of the request, of the specific exemption or confidentiality provision so the County will be able to comply with the requirements of Chapter 119, Florida Statutes.

Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the Contractor to the County which the Contractor maintains are exempt or confidential from such inspection/production as a public record, then the Contractor shall hire and compensate attorney(s) who shall represent the interest of the County as well as the Contractor in defending such action. The Contractor shall also pay any costs to defend such action and shall pay any costs and attorney fees, which may be awarded pursuant to Section 119.12, Florida Statutes.

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 THE INFORMATION TECHNOLOGY DEPARTMENT:

Alice.Colon@brevardfl.gov; (321)617-7395; 2725 JUDGE FRAN JAMIESON WAY, SUITE C-203, VIERA, FL 32940.

Section 21 - Unauthorized Alien Workers and E-Verify

The County will not intentionally award publicly-funded Contracts to any Contractor who knowingly employs unauthorized alien workers, constituting a violation of the

employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act "INA"). The County shall consider a Contractor's intentional employment of unauthorized aliens as grounds for immediate termination of this Contract.

The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any sub-contractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the sub-contractor during the Contract term.

In accordance with the E-Verify provisions, the Contractor agrees to provide a copy of their fully executed E-Verify Memorandum of Understanding prior to execution of the Contract.

Compliance with the terms of this Section is made an express condition of this Contract and the County may treat a failure to comply with the provisions herein as a material breach of this Contract.

Section 22 - Scrutinized Companies

Awarded Contractor shall certify that it and its sub-Contractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes, if the Contract is for more than one million dollars, the Contractor further certifies that it and its sub-Contractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes.

For Contracts of any amount, if the County determines the Contractor submitted a false certification under Section 287.135(5), Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the County shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the County's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or on a

case-by-case basis the County may choose to maintain the Contract if the conditions of Section 287.135(4), Florida Statutes, are met.

For Contracts \$1,000,000 and greater, if the County determines the Contractor submitted a false certification under Section 287.135(5), Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies with Activities in the Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the County shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the County's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or on a case-by-case basis the County may choose to maintain the Contract if the conditions of Section 287.135(4), Florida Statutes, are met.

The Contractor agrees to observe the above requirements for applicable sub-contracts entered into for the performance of work under this Contract.

As provided in Section 287.135(8), Florida Statutes, if federal law ceases to authorize these Contracting prohibitions, this section shall become inoperative and unenforceable.

Section 23 - Federal Tax ID Number

The Contractor shall provide to the County their Federal Tax ID Number or other acceptable information as determined in the sole discretion of the County.

Section 24 - Employment

The Contractor shall not engage the services of any person or persons now employed by the County, including any department, agency, board or commission thereof, to provide services relating to this Contract without prior written consent from the County.

Section 25 - Public Entity Crimes

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 on a Contract to provide any goods or services to a public entity, may not submit a bid on a Contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Contractor, supplier, sub-Contractor, or consultant under a Contract with a public entity, and may not transact business with any public entity in excess of the threshold

amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six months from the date of being placed on the convicted vendor list.

Section 26 - Construction of Contract

The parties hereby acknowledge that they fully reviewed this Contract, including its attachments, and had the opportunity to consult with legal counsel of their choice, and that this Contract shall not be construed against any party as if they were the drafter of this Contract.

Section 27 - Entire Contract

This Contract, together with Task Orders or Statement(s) of Work that may follow, embody the entire Contract and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that not merged herein. No alteration, change, or modification of the terms of this Contract shall be valid unless made in writing, signed by both parties hereto as an addendum to this Contract, or as specifically prescribed in a Task Order or Statement of Work.

Section 28 - Severability

In the event a court of competent jurisdiction finds any sentence, provision, paragraph, or section of this Contract illegal or otherwise unenforceable, the remaining parts of this Contract shall continue in full force and effect as though such sentence, provision, paragraph or section has been omitted from this Contract.

Section 29 - Waiver

In the event the County waives any of the Contractor's obligations or duties in this Contract, it shall not constitute a waiver of any of the other obligations and duties of the Contractor, nor shall waiver of any such obligation or duty constitute a continuing waiver of that obligation or duty.

Section 30 - Delegation of Work

The County reserves the right to ascertain the necessity for Contractor service and shall, at its sole discretion, determine the conditions warranting Contractor response.

Section 31 - Ownership of Materials Related to Services

The parties agree that any materials prepared and delivered by the Contractor in the course of providing the Work shall be considered works made for hire. All rights, title, and interests of such materials shall be and are assigned to the County as its sole and exclusive property. Notwithstanding the foregoing, the parties recognize that performance of the Contractor hereunder will require the skills of the Contractor and, therefore, the Contractor shall retain the right to use, without fee and for any purposes, such "know-how", ideas, techniques, and concepts used or developed by the Contractor in the course of performance of the work of this Contract.

Section 32 - Deficiencies

If through any cause, the Contractor shall fail to fulfill its obligations under this Contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this Contract:

- A. The County shall have the right to direct the Contractor to cease operation until deficiencies are corrected.
- B. The County shall have the right to schedule a meeting to discuss the deficiencies. The Contractor shall be responsible for providing a written corrective action plan within three days after the meeting.
- C. The County shall have the right to specify other remedial action, which may be incorporated into this Contract by mutual consent of the parties.
- D. Any deficiencies not addressed by the Contractor by the time required under this Contract will be grounds to deny payment for the Work affected.
- E. The County shall have the right to pursue claims for actual damages involving any defects in the Work performed by the Contractor not remedied to the satisfaction of the County.

Section 33 - Change Order

A change to a Task Order or Statement of Work approved by the County authorizing an addition, deletion or revision in the Work, resulting in an adjustment in the compensation and/or the Completion Time of a Task Order.

CHANGE OF COMPLETION TIME AND CLAIMS FOR DELAYS

- A. The Completion Time may only be changed by a Change Order. Any claim for adjustment of the Completion Time shall be based on notice delivered by the party making the claim to the other party (but in no event later than three days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data, including, but not limited to, backup for additional compensation requests for any delays and/or loss of efficiency, shall be delivered within three days after such occurrence (unless the County allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. No claim for an adjustment in the Completion Time and any related equitable adjustment to the Task Order or Statement of Work will be valid if not submitted in strict accordance with the requirements of this paragraph. Otherwise, such claims will be deemed to have been waived.
- B. **Time is of the essence as to all applicable provisions related to time.**
- C. Where Contractor is prevented from completing any part of the Work within the Completion Time due to delay beyond the control of Contractor, the Completion Time may be extended by the County in an amount equal to the time lost due to such delay if a claim is made thereof as provided in this provision. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by the County; acts or neglect of utility owners or other contractors performing other unrelated work; fires; floods; epidemics/pandemics and quarantines; abnormal weather conditions; or acts of God. Delays attributable to and within the control of a subcontractor shall be deemed to be delays within the control of Contractor.
- D. **No Damages for Delay: NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE COUNTY BY REASON OF ANY DELAYS.** The Contractor shall NOT be entitled to an increase in the payment or compensation of any kind from the County for direct, indirect, consequential, impact or other costs, expenses or

damages, including but not limited to costs of acceleration, or inefficiency, arising because of delay, disruption, interference or hindrances from any cause whatsoever, including, but not limited to, acts or neglect by the County; acts or neglect of utility owners or other contractors performing other unrelated work; fires; floods; epidemics/pandemics and quarantines; abnormal weather conditions; or acts of God. However, this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith, or active interference on the part of the County or its agents. Otherwise, the Contractor shall be entitled only to extensions of the Completion Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

DISPUTED CHANGE ORDER REQUEST

- A. Within five days after denial of the Contractor's request for a change order, the Contractor may submit to the County Manager, or designee, documentation of the Contractor's position in the dispute or disagreement. The County Manager, or designee, within five days after the receipt of the Contractor's documentation, shall review the request and make a final determination as to whether denial was arbitrary and/or capricious based upon the sufficiency of the work under the terms of the contract, applicable regulations, and relevant construction standards. Based upon the sufficiency and degree of completion, as well as any defects in the work and the amount reasonably required, if any, to correct or repair defective work, the reviewer shall make the final determination as to whether a change order should be approved by the County Manager.
- B. If the denied request or disputed amount exceeds the County Manager's purchasing authority, the County Manager shall present a report, recommendation, and the Contractor's claim and documentation to the County Commission for a final determination within thirty days after receiving the Contractor's documentation for the claim. The Commission shall make its decision using the standards specified in above. Such a decision shall be final.

The deadlines for completing the dispute resolution process described above may be extended by mutual agreement of the County and Contractor.

Section 34 - Liquidated Damages

It is mutually agreed that time is of the essence with this Contract and should the Contractor fail to complete the Work, or portions thereof, within the specified time in a Task Order or Statement of Work, or any authorized extension thereof, liquidated damages as set forth below shall be deducted from the compensation otherwise to be paid to the Contractor. Both parties recognize that precise actual damages for Contractor's failure to complete tasks within the deadline (including any valid extensions) set forth in the Task Order or Statement of Work are impossible to determine due to the impossibility of precisely ascertaining the amount of damages that will be sustained by the County as a consequence of such delay. Both parties desire to obviate any question of dispute concerning the amount of said damages for delay and the cost and impact of the failure of the Contractor to complete the tasks in a Task Order or Statement of Work on time. The parties, therefore, agree to fix liquidated damages for delay in completing tasks in a Task Order or Statement of Work to an amount that is not grossly disproportionate and is reasonably expect to follow from a breach of this Contract. Contractor waives any and all challenges and legal defenses to the validity of any liquidated damages established in the Contract, including that the liquidated damages are void as penalties or are not reasonably related to the actual damages sustained by the County as a result of Contractor's untimely performance. The parties stipulate these amounts are not a penalty, but liquidated damages to the County based on a reasonable measure of damages from the County's experience in the pavement marking industry and given the nature of losses that result from delays. For each day that any part of the Work remains incomplete after the expiration of the time allowed for completion of the Work, the sums per day set forth below shall be deducted from any monies due the Contractor, the County shall have the right to recover the liquidated damages sum from the Contractor. The amount of these deductions are to cover liquidated damages to the County incurred by additional and other expenses due to the failure of the Contractor to complete the Work or any part of the Work within the Completion Time specified in the Task Order or Statement of Work, and such deductions are not to be considered as penalties.

This liquidated damages clause applies only to delay claims arising out of the Contractor's failure to timely perform the Work required under the Contract. Nothing in this liquidated damages provision shall be deemed to preclude the prosecution of a claim by the County for actual damages involving any defects in the Work, breach of Contract of any kind, negligence or any other claim for damages not involving a claim based solely on delay caused by the Contractor's untimely performance of the Work.

- A. Maintenance: Upon failure of the Contractor to complete the Work in a Task Order or Statement of Work by the Completion Time, or any authorized extension thereof, the Contractor shall pay **\$250.00 per day for each calendar day of delay** after the date specified for Completion Time up to but not including the date the Work is deemed complete by the County.

Section 35 - Resource Requirements

The Contractor shall furnish all supervision, quality control, labor, materials, equipment, supervision, tools, transportation, supplies, manpower, and pay disposal fees necessary to complete the Work specified in this Contract.

Section 36 - Assignment of Work

All Work will be ordered by the County in the form of a written Task Order or Statement of Work. No work will begin until a Task Order or Statement of Work has been issued to the Contractor. The Contractor shall submit a written quotation to the County for such work within seven days. The quotation shall be based solely upon the prices contained in Attachment A. The quotation shall also include the proposed schedule for completion of the project in days.

The Task Order or Statement of Work will contain a start date and completion date that will be mutually agreed to between the County and the Contractor. The Contractor will submit a work schedule prior to beginning any work ordered. The work schedule will outline any milestones. The Contractor will consult with the County prior to any schedule variance. The County shall be notified prior to the schedule change and must agree with the recommended changes in writing. The Contractor shall start working on assigned projects within two days of notification. The quotation shall be based solely upon the unit prices contained in Attachment A. The quotation shall also include the proposed schedule for completion of the project in calendar days. Upon receipt and

review of the quotation, the County may issue the Contractor a Task Order or Statement of Work for the quoted Work.

Section 37 - Acceptance

Acceptance of the work will be granted when the Contractor completes a project to the satisfaction of the County. The County shall remit payment upon acceptance in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, *et seq.*

Section 38 - Notices and Communication

Any notices or other written communications shall be considered delivered when posted by certified mail, delivered in person or by e-mail. Any notices or other written communications required herein, shall be provided as follows:

County Representatives:

Brevard County Board of County Commissioners
ATTN: Lois Boisseau, Assistant I.T. Director
Information Technology Department
2725 Judge Fran Jamieson Way, C203
Viera, FL 32940
(321) 617-7395

Contractor Representative:

Phoenix Business, Inc.
Attn : Vikas Pathak, PMP
6021 Midnight Pass Road, Unit 3
Sarasota, FL 34242
(714) 343-2074

The Contractor shall provide and keep up to date the name and cell phone number of its Contractor Representative. Each party is responsible for updating this contact information, as needed.

Section 39 - Invoicing

Invoices shall be submitted with seven days of completed work. The Contractor shall certify that work has been completed. Invoices submitted by the Contractor to the County shall be sent with the proper documentation to the address provided above. County Administrative Order-33 directs the prompt payment of invoices, attached herein as Attachment B.

Section 40 - Captions

The sections headings in this Contract are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Contract.

Section 41 - Force Majeure.

Neither party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform results from unknown circumstances beyond its control, including, but not limited to, acts of a public enemy; acts or neglect of utility owners or other contractors performing other unrelated work; fires; floods; epidemics/pandemics and quarantines; abnormal weather conditions; or acts of God.

[REMAINDER OF PAGE LEFT BLANK. SIGNATURES TO FOLLOW.]

In witness whereof, the parties hereto have set their hands and seals the date
last written below.

Attest:

[Signature]
Rachel Sadoff, Clerk

Brevard County, Florida

By: Frank Abbate 6/30/22
Frank Abbate, County Manager Date

Approved as to legal form and content
solely for Brevard County:

[Signature]
Alex Esseeesse, Deputy County Attorney

Approved by the Board on May 4, 2021

Witness/Seal:

Contractor

[Signature] June 9, 2022
Signature Date

HANIF SARANGI
Name

PRESIDENT
Title

STATE OF Florida
COUNTY OF Sarasota

I hereby certify that before me, an officer duly authorized to take acknowledgments,
personally appeared Hamif Sarangi to me known to be the
President of Phoenix Business Inc, or provided
_____ as identification and who acknowledged before me that
they executed the within instrument freely and voluntarily for the purposes therein
expressed.

[Signature] 6/9/22
Notary Signature Date
Sarah Ockuly
Notary Name (typed or printed)

[Notary Stamp]



SARAH OCKULY
Commission # GG 278400
Expires November 13, 2022
Bonded thru Budget Notary Services