

RESOLUTION 22-39

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH MARSHALL BROTHERS CONSTRUCTION & ENGINEERING, INC. FOR THE PCB PARKWAY REUSE TRANSMISSION EXTENSION PROJECT IN THE BASIC AMOUNT OF \$2,043,910.

BE IT RESOLVED that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that Agreement between the City and Marshall Brothers Construction & Engineering, Inc., relating to the PCB Parkway Reuse Transmission Line Extension Project, in the basic amount of Two Million, Forty Three Thousand, Nine Hundred Ten Dollars and No Cents (\$2,043,910.00), in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in special session this 10th day of November, 2021.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

**SECTION 00050
AGREEMENT**

THIS AGREEMENT is made this _____ day of November 2020 by and between **THE CITY OF PANAMA CITY BEACH, FLORIDA**, (hereinafter called "OWNER") and **MARSHALL BROTHERS CONSTRUCTION AND ENGINEERING, INC.**, doing business as a corporation, having a business address of **2305 Transmitter Road, Panama City, Florida 32404** (hereinafter called "CONTRACTOR") , for the performance of the Work (as that term is defined below) in connection with the construction of **ITB PCB21-25 PCB PARKWAY REUSE TRANSMISSION EXTENSION** ("Project"), to be located at **Panama City Beach, Florida**, in accordance with the Drawings and Specifications prepared by Dewberry, Inc. the Engineer of Record (hereinafter called "ENGINEER") and Anchor Consulting Engineering and Inspection, Inc. (ACEI) all other Contract Documents hereafter specified.

OWNER and CONTRACTOR, for the consideration herein set forth, agree as follows:

1. The CONTRACTOR shall furnish, at its sole expense, all supervision, labor, equipment, tools, material, and supplies to properly and efficiently perform all of the work required under the Contract Documents to **include the Alternative for Ductile Iron Pipe in lieu of Polyvinyl Chloride Pipe** and shall be solely responsible for the payment of all taxes, permits and license fees, labor fringe benefits, insurance and bond premiums, and all other expenses and costs required to complete such work in accordance with this Agreement (collectively the "Work"). CONTRACTOR's employees and personnel shall be qualified and experienced to perform the portions of the Work to which they have been assigned. In performing the Work hereunder, CONTRACTOR shall be an independent contractor, maintaining control over and having sole responsibility for CONTRACTOR's employees and other personnel. Neither CONTRACTOR, nor any of CONTRACTOR's sub-contractors or sub-subcontractors, if any, nor any of their respective employees or personnel, shall be deemed servants, employees, or agents of the OWNER.

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2. The CONTRACTOR will commence the Work required by the Contract Documents to include the **Added Alternative for Ductile Iron Pipe in lieu of Polyvinyl Chloride Pipe** within 10 calendar days after the date of the Notice to Proceed (NTP) to be issued by OWNER in writing 30 days from the date of this Agreement and will **achieve Substantial Completion of the Work within 330 consecutive Calendar Days of the required commencement date**, except to the extent the period for Substantial Completion is extended pursuant to the terms of the Contract Documents ("Contract Time"). Final Completion of the Work shall be achieved by the CONTRACTOR within the time period set forth in Section 15.2 of Section 00100, General Conditions, or **within 30 days of Substantial Completion**.

3. The CONTRACTOR agrees to pay the OWNER, as liquidated damages, the sum of **\$500.00** for each calendar day that expires after the Contract Time for Substantial Completion as more fully set forth in Section 15 of the General Conditions.

4. The CONTRACTOR agrees to perform all Work described in the Contract Documents and comply with the terms therein for the sum of **\$2,043,910.00** as detailed in the **BASE BID ITEMS NO. 1 THROUGH 8 AND, ADDITIVE ALTERNATIVE REUSE TRANSMISSION EXTENSION BID ITEMS NO. A.9 THROUGH A.14, AND BASE BID ITEMS NO. 15 THROUGH NO. 22**, within the Bid Proposal Form, as said amount may be hereafter adjusted pursuant to the terms of the Contract Documents ("Contract Price"). The CONTRACTOR agrees to perform all Work associated with Additive Alternative use of Ductile Iron Pipe in lieu of Polyvinyl Chloride Pipe detailed within the Bid Proposal Form submitted by the CONTRACTOR (Alternative Bid Items No. A.9 through A.14). The CONTRACTOR agrees to perform all other Work associated with Base Bid Items (Base Bid Items No. 1 through 8 and 15 through 22).

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5. The term "Contract Documents" means and includes the following documents, all of which are incorporated into this Agreement by this reference:

Section 00010	ADVERTISEMENT FOR BIDS
Section 00020	INFORMATION FOR BIDDERS
Section 00030	BID PROPOSAL FORM
Section 00040	BID BOND
Section 00050	AGREEMENT
Section 00060	PERFORMANCE BOND
Section 00070	PAYMENT BOND
Section 00080	NOTICE OF AWARD
Section 00090	NOTICE TO PROCEED
Section 00095	STATEMENT UNDER SECTION 287.087, FLORIDA STATUTES, ON PREFERENCE TO BUSINESSES WITH DRUG-FREE WORKPLACE PROGRAMS
Section 00096	TRENCH SAFETY ACT CERTIFICATE OF COMPLIANCE
Section 00097	PUBLIC ENTITY CRIMES STATEMENT
Section 00099	CERTIFICATE OF INSURANCE
Section 00100	GENERAL CONDITIONS
Section 00800	SUPPLEMENTAL CONDITIONS
Section 00801	SUPPLEMENTAL CONDITIONS SCHEDULE
Section 00802	SUPPLEMENTAL CONDITIONS EROSION
Section 00808	SALES TAX EXEMPTION
Section 01046	SPECIAL PROVISIONS
Section 01065	PERMITS AND FEES
Section 01100	SPECIAL PROJECT PROCEDURES
Section 01110	ENVIRONMENTAL PROTECTION
Section 01150	MEASUREMENT AND PAYMENT
Section 01300	SUBMITTALS
Section 01380	CONSTRUCTION PHOTOGRAPHS
Section 01410	TESTING AND LAB SERVICES

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Section 01505	MOBILIZATION AND DEMOBILIZATION
Section 01705	PROJECT CLOSE-OUT
Drawings	PREPARED BY ACEI., NUMBERED C0.1 THROUGH C5.5 AND DATED JULY 2021.
Technical Specs	PREPARED BY ACEI AND ISSUED BY DEWBERRY DATED JULY 2021, CONFORMED NOVEMBER 2021
Appendix A	E-VERIFY FORM
Appendix B	CONFLICT/NON-CONFLICT OF INTEREST STATEMENT
Appendix C	NON-COLLUSION AFFIDAVIT
Appendix D	CHANGE ORDER FORM
Appendix E	CONSTRUCTION CHANGE DIRECTIVE
Appendix F	NOTICE OF SUBSTANTIAL COMPLETION
Appendix G	GEOTECHNICAL REPORT
Addenda:	No. 1: dated September 8, 2021 No. 2: dated September 24, 2021 No. 3: dated October 8, 2021 No. 4: dated October 15, 2021 No. 5: dated October 19, 2021

6. The Contract Documents also includes any written amendments to any of the above signed by the party to be bound by such amendment. The Contract Documents are sometimes referred to herein as the "Agreement".
7. The OWNER will pay the Contract Price to the CONTRACTOR in the manner and at such times as set forth in Contract Documents.
8. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
9. This Agreement shall be governed by the laws of the State of Florida.

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10. All notices required or made pursuant to this Agreement shall be in writing and, unless otherwise required by the express terms of this Agreement, may be given:
- a. by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or
 - b. by sending same by Federal Express, Express Mail, Airborne, Emery, Purolator or other expedited mail or package delivery, or
 - c. by hand delivery to the appropriate address as herein provided. Notices to OWNER required hereunder shall be directed to the following address:

If to Owner:

City of Panama City Beach
17007 Panama City Beach Parkway
Panama City Beach, Florida 32413
ATTENTION: Drew Whitman, City Manager
Fax No.: (850) 233-5108

If to Contractor:

Marshall Brothers Construction and Engineering, Inc.
2305 Transmitter Road
Panama City, Florida 32404
ATTENTION: John M. Marshall, President
E-Mail Address: john.marshall@marshallbrothers.us

Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

11. The CONTRACTOR recognizes that the OWNER is exempt from sales tax and may wish to generate sales tax savings for the Project. Accordingly, to the extent directed by and without additional charge to the OWNER, the CONTRACTOR shall comply with and fully implement the sales tax savings program as more fully described in the Sales Tax Exemption Addendum. If required by the OWNER, the Sales Tax Exemption Addendum shall be made a part of the Contract Documents, the form of which is set forth in Section 00808.

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12. The failure of the OWNER to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a continuing waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
13. Each of the parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by this Agreement.
14. Should any provision of the Agreement be determined by a court with jurisdiction to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.
15. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural. The term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.
16. For this Project, the OWNER has designated a Project Representative to assist OWNER with respect to the administration of this Agreement. The Project Representative to be utilized by OWNER for this Project shall be Jose A. Pereira P.E., Sr. Associate, Dewberry or his designee Elizabeth S. Moore, PE, President, Anchor CEI, Inc..

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17. The CONTRACTOR acknowledges and agrees that no interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which the OWNER, PROJECT REPRESENTATIVE, or ENGINEER may be responsible, in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from OWNER. The CONTRACTOR expressly acknowledges and agrees that it shall receive no damages for delay. The CONTRACTOR's sole remedy, if any, against the OWNER will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision.

This section shall expressly apply to claims for early completion, as well as to claims based on late completion. Except as expressly set forth in this section, in no event shall the OWNER be liable to the CONTRACTOR whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, special, indirect, incidental, or consequential damages of any kind or nature whatsoever.

18. **INSURANCE - BASIC COVERAGES REQUIRED**

- a. The CONTRACTOR shall procure and maintain the following described insurance on policies and with insurers acceptable to the OWNER. Current Insurance Service Office (ISO) policies, forms, and endorsements or equivalents, or broader, shall be used where applicable.
- b. These insurance requirements shall not limit the liability of the CONTRACTOR. The insurance coverages and limits required of the CONTRACTOR under this Agreement are designed to meet the minimum requirements of the OWNER and the OWNER does not represent these types or amounts of insurance to be sufficient or adequate to protect the CONTRACTOR's interests or liabilities. CONTRACTOR alone shall be

responsible to the sufficiency of his/her own insurance program.

- c. The CONTRACTOR and the CONTRACTOR's subcontractors and sub-subcontractors shall be solely responsible for all their property, including but not limited to any materials, temporary facilities, equipment, and vehicles, and for obtaining adequate and appropriate insurance covering any damage or loss to such property. The CONTRACTOR and the CONTRACTOR's sub-contractors and sub-subcontractors expressly waive any claim against OWNER arising out of or relating to any damage or loss of such property, even if such damage or loss is due to the fault or neglect of the OWNER or anyone for whom the OWNER is responsible. The CONTRACTOR is obligated to include, or cause to be included, provisions similar to this paragraph in all of the CONTRACTOR's subcontracts and its subcontractors' contracts with their sub-subcontractors.
- d. The CONTRACTOR's deductibles/self-insured retentions shall be disclosed to the OWNER and are subject to the OWNER's approval. They may be reduced or eliminated at the option of the OWNER. The CONTRACTOR is responsible for the amount of any deductible or self-insured retention. Any deductible or retention applicable to any claim or loss shall be the responsibility of the CONTRACTOR and shall not be greater than \$25,000, unless otherwise agreed to, in writing, by the OWNER.
- e. Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR shall be considered primary, and insurance of the OWNER shall be considered excess, as may be applicable to claims or losses which arise out of the Hold Harmless, Payment on Behalf of OWNER, Insurance, Certificates of Insurance, and any Additional Insurance provisions of this agreement, contract or lease.

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f. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE COVERAGE**

1. The CONTRACTOR shall purchase and maintain workers' compensation and employers' liability insurance for all employees engaged in the Work, in accordance with the laws of the State of Florida, and, if applicable to the Work, shall purchase and maintain Federal Longshoremen's and Harbor Workers' Compensation Act Coverage. Limits of coverage shall not be less than:

\$1,000,000	Limit Each Accident
\$1,000,000	Limit Disease Aggregate
\$1,000,000	Limit Disease Each Employee

2. The CONTRACTOR shall also purchase any other coverage required by law for the benefit of employees.
3. The CONTRACTOR shall provide to OWNER an Affidavit stating that it meets all the requirements of Florida Statute 440.02 (15) (d).

g. **COMMERCIAL GENERAL LIABILITY COVERAGE**

1. The CONTRACTOR shall purchase and maintain Commercial General Liability Insurance on a full occurrence form. Coverage shall include, but not be limited to: Premises and Operations; Personal Injury; Contractual for this Agreement; Independent Contractors; Broad Form Property Damage; Products and Completed Operation Liability Coverages; and shall not exclude coverage for the "X" (Explosion), "C" (Collapse) and "U" (Underground) Property Damage Liability exposures. Limits of coverage shall not be less than:

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Bodily Injury, Property Damage & Personal Injury	\$1,000,000 Combined Single Limit Each Occurrence, and
Liability	\$2,000,000 Aggregate Limit

2. The General Aggregate Limit shall be specifically applicable to this Project. The Completed Operations Liability Coverages must be maintained for a period of not less than 3 years following OWNER's final acceptance of the project.

3. The CONTRACTOR shall add the OWNER as an additional insured through the use of Insurance Service Office Endorsements No. CG 20.10.10.01 and No. CG 20.37.10.01 wording or equivalent, or broader, an executed copy of which shall be attached to or incorporated by reference on the Certificate of Insurance to be provided by the CONTRACTOR pursuant to the requirements of the Contract Documents.

h. BUSINESS AUTOMOBILE LIABILITY COVERAGE

1. The CONTRACTOR shall purchase and maintain Business Automobile Liability Insurance as to ownership, maintenance, use, loading and unloading of all of CONTRACTOR's owned, non-owned, leased, rented, or hired vehicles with limits not less than:

Bodily Injury & Property Damage	\$1,000,000 Combined Single Limit Each Accident
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i. EXCESS OR UMBRELLA LIABILITY COVERAGE

1. CONTRACTOR shall purchase and maintain Excess Umbrella Liability Insurance or Excess Liability Insurance on a full occurrence form providing the same continuous coverages as required for the underlying Commercial General, Business Automobile and

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Employers' Liability Coverages with no gaps in continuity of coverages or limits with the OWNER added by endorsement to the policy as an additional insured in the same manner as is required under the primary policies, and shall not be less than \$4,000,000 for each occurrence and aggregate as required by OWNER.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement in two (2) copies each of which shall be deemed an original on the date first written above.

(SEAL)

OWNER:

**CITY OF PANAMA CITY BEACH,
FLORIDA**

ATTEST:

BY: _____

Lynne Fasone, City Clerk

NAME: Drew Whitman
TITLE: City Manager

City Attorney (as to form only)

CONTRACTOR:

MARSHALL BROTHERS
CONSTRUCTION AND
ENGINEERING, INC.

ATTEST:

BY: _____

NAME: John Marshall
(Please Type)

NAME: _____
(Please Type)

ADDRESS: 2305 Transmitter Road
Panama City, FL 32404

END OF SECTION 00050

CONFORMED AGREEMENT 00050-11