

RESOLUTION NO. 24-34

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH ECSC, LLC RELATING TO THE CONSTRUCTION OF THE NORTH ALF COLEMAN ROAD SIDEWALK PROJECT IN THE AMOUNT OF \$676,527.52; AND AUTHORIZING FOR THE EXECUTION OF QUALIFYING CHANGE ORDERS UP TO \$54,122.20.

BE IT RESOLVED that:

1. The appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Agreement with ECSC, LLC for the construction of the North Alf Coleman Road sidewalk project, in the amount not to exceed Six Hundred Seventy-Six Thousand Five Hundred Twenty-Seven Dollars and Fifty-Two Cents (\$676,527.52), in substantially the form **attached** as Exhibit A, with such changes, insertions, or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.
2. The City Manager is authorized to execute and deliver on behalf of the City change orders related to this project in a cumulative amount that does not exceed the total tax savings recognized for the project plus an 8% contingency of the Base Bid in the amount of \$54,122.20, provided that the City's Project Manager verifies that a change order does not expand the scope of the project, the Finance Director confirms the Base Bid amount plus the contingency budget approved above is not exceeded, and the City Attorney has reviewed the form of the change order.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED, APPROVED AND ADOPTED in special session this 9th day of November, 2023.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

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SECTION 00050

AGREEMENT

THIS AGREEMENT is made this 9th day of November, 2023 by and between THE CITY OF PANAMA CITY BEACH, FLORIDA, (hereinafter called "OWNER") and ECSC LLC, doing business as a Limited Liability Company (an individual), or (a partnership), or (a corporation), having a business address of 1901 N. East Avenue, Panama City, FL. 32405 (hereinafter called "CONTRACTOR"), for the performance of the Work (as that terms is defined below) in connection with the construction of **Alf Coleman Road Eastside Sidewalk** ("Project"), to be located at Panama City Beach, Florida, in accordance with the Drawings and Specifications prepared by **Gortemoller Engineering, Inc.** the Engineer of Record (hereinafter called "Engineer") and 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 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 OWNER.

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2. The CONTRACTOR will commence the Work required by the Contract Documents within ten (10) calendar days after the date of the NOTICE TO PROCEED to be issued by OWNER in writing within thirty (30) calendar days from the date of this Agreement and will achieve Substantial Completion of the Work within 90 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 CONTRACTOR within the time period set forth in Section 15.2 of Section 00100, General Conditions.
3. The CONTRACTOR agrees to pay the OWNER, as liquidated damages, the sum of \$4,866 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 of the Work described in the Contract Documents and comply with the terms therein for the sum of \$ 676,527.52 as shown in the BID SCHEDULE, included within the Bid Proposal Form, as said amount may be hereafter adjusted pursuant to the terms of the Contract Documents ("Contract Price").
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

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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	SUBMISSION OF WORK SCHEDULE
Section 00808	SALES TAX EXEMPTION ADDENDUM
Section 01046	SPECIAL PROVISIONS
Section 01065	PERMITS AND FEES
Section 01100	SPECIAL PROJECT PROCEDURES
Section 01110	ENVIRONMENTAL PROTECTION
Section 01300	SUBMITTALS
Section 01380	CONSTRUCTION PHOTOGRAPHS
Section 01505	MOBILIZATION/DEMobilIZATION
Section 01705	PROJECT CLOSEOUT
Section 02110	SITE CLEARING
Section 02200	EARTHWORK
Section 02210	GRASSING
Section 02211	SODDING
Section 02222	TRENCHING, BACKFILLING, AND COMPACTING
Section 02500	PAVING QUALITY CONTROL SYSTEM
Section 02505	UNDERGROUND UTILITY PROTECTION
Section 02510	GENERAL CONSTRUCTION REQUIREMENTS FOR ASPHALT PAVEMENT
Section 02512	STABILIZATION AGREEMENT

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Section 02516	LIMEROCK BASE COURSE
Section 02520	ASPHALT TESTING
Section 02960	RESTORATION
Section 03310	CONCRETE WORK
Section 05520	HANDRAILS AND RAILINGS
Section 05600	MISCELLANEOUS METALS
Section 20000	MINIMUM TECHNICAL STANDARDS CHECKLIST
Appendix A	CONTRACT CHANGE ORDER FORM
Appendix B	PAY REQUEST FORM
Appendix C	GEOTECHNICAL ENGINEERING REPORT
Appendix D	ADDENDA (NOT INCLUDED UNTIL CONFORMED SET IS ISSUED AFTER PROJECT IS AWARDED)
Exhibit A	INSURANCE REQUIREMENTS
Exhibit B	CONSTRUCTION PLANS

DRAWINGS prepared by Gortemoller Engineering, Inc. Contract Plans and subcomponent sets and dated September 2023.

SPECIFICATIONS prepared or issued by Gortemoller Engineering, Inc. including the above DRAWINGS date September 2023.

ADDENDA

No. 1, dated October 24, 2023

No. 2, dated October 25, 2023

No. , dated , 20

No. , dated , 20

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".

6. The OWNER will pay the Contract Price to the CONTRACTOR in the manner and at such times as set forth in Contract Documents.

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7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
8. This Agreement shall be governed by the laws of the State of Florida.
9. 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 either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, Express Mail, Airborne, Emery, Purolator or other expedited mail or package delivery, or (iii) 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, FL 32413
ATTENTION: _____
Drew Whitman City Manager
Fax No.: _____
(850) 233-5108

If to Contractor:

ECSC LLC

1901 N. East Avenue

Panama City, FL. 32405
ATTENTION: _____
Fax No.: _____

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

10. CONTRACTOR recognizes that 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 OWNER, CONTRACTOR shall comply with and fully implement the sales tax savings program as more fully

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described in the Sales Tax Exemption Addendum. If required by 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.

11. The failure of 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.
12. 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.
13. 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.
14. 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

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any party hereto, regardless of who is responsible for its preparation.

15. For this Project, 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 Gortemoller Engineering, Inc., Blake Furbee, P.E., Project Manager.
16. 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. CONTRACTOR expressly acknowledges and agrees that it shall receive no damages for delay. CONTRACTOR's sole remedy, if any, against 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. Notwithstanding the foregoing, if the Work is delayed due to the fault or neglect of OWNER or anyone for whom OWNER is liable, and such delays have a cumulative total of more than 90 calendar days, CONTRACTOR may make a claim for its actual and direct delay damages accruing after said 90 calendar days as provided in Section 00805 Supplemental Conditions, Contract Claims and Changes. Except as expressly set forth in this section, in no event shall OWNER be liable to 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.
17. INSURANCE - BASIC COVERAGES REQUIRED

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The CONTRACTOR shall procure and maintain the following described insurance on policies and with insurers acceptable to OWNER. Current Insurance Service Office (ISO) policies, forms, and endorsements or equivalents, or broader, shall be used where applicable.

These insurance requirements shall not limit the liability of the CONTRACTOR. The insurance coverages and limits required of CONTRACTOR under this Agreement are designed to meet the minimum requirements of 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 its own insurance program.

The CONTRACTOR and the CONTRACTOR'S subcontractors and sub-subcontractors shall be solely responsible for all of 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 subcontractors 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.

The CONTRACTOR'S deductibles/self-insured retention's shall be disclosed to OWNER and are subject to OWNER'S approval. They may be reduced or eliminated at the option of OWNER. The CONTRACTOR is responsible for the

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amount of any deductible or self-insured retention. Any deductible or retention applicable to any claim or loss shall be the responsibility of CONTRACTOR and shall not be greater than \$25,000, unless otherwise agreed to, in writing, by OWNER.

Insurance required of the CONTRACTOR or any other insurance of the CONTRACTOR shall be considered primary, and insurance of 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.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE COVERAGE

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

The CONTRACTOR shall also purchase any other coverage required by law for the benefit of employees.

The CONTRACTOR shall provide to OWNER an Affidavit stating that it meets all the requirements of Florida Statute 440.02 (15) (d).

COMMERCIAL GENERAL LIABILITY COVERAGE

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:

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

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 three (3) years following OWNER'S final acceptance of the project.

The CONTRACTOR shall add 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 CONTRACTOR pursuant to the requirements of the Contract Documents.

BUSINESS AUTOMOBILE LIABILITY COVERAGE

The CONTRACTOR shall purchase and maintain Business Automobile Liability Insurance as to ownership, maintenance, use, loading and unloading of all of

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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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EXCESS OR UMBRELLA LIABILITY COVERAGE

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 Employers' Liability Coverages with no gaps in continuity of coverages or limits with 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 \$10,000,000, each occurrence and aggregate as required by OWNER.

18. PUBLIC RECORDS:

The City is a public agency subject to the Florida Public Records Law expressed in Chapter 119, Florida Statutes. Accordingly, to the extent that it is determined that Contractor is acting on behalf of City as provided under Section 119.011(2), Contractor agrees to also comply with that law, specifically including to:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- B. Upon request of the City, provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law, or provide the City with a copy of the requested records.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
- D. Meet all requirements for retaining public records and transfer, at no cost, to

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the City all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, IT IS THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, AND TO CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 850-233-5100, LFASONE@PCBFL.GOV, 17007 PANAMA CITY BEACH PARKWAY, PANAMA CITY BEACH, FL 32413.

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

BY: 

NAME: Drew Whitman
(Please type)

TITLE: City Manager

CONTRACTOR:

BY: _____

NAME: _____
(Please Type)

ADDRESS: _____

ATTEST:


City Clerk


City Attorney (as to form only)

ATTEST:

NAME: _____
(Please Type)

SECTION 00080

NOTICE OF AWARD

TO: ECSC, LLC
1901 N. East Avenue
Panama City, FL. 32405

PROJECT DESCRIPTION:

ALF COLEMAN ROAD EASTSIDE SIDEWALK

The City of Panama City Beach ("City") has considered the BID submitted by you for the above described Project in response to its Advertisement for Bids dated September 29, 20_23, and associated Information for Bidders.

You are hereby notified that your Bid in the amount of \$ 676,527.52 has been accepted by the City. Provided, however, nothing in this Notice or your delivery to the City of the Agreement executed by you (with the required Bonds and Certificates of Insurance) shall in any manner or way be deemed to create any contract between you and the City. No such contract shall be created unless and until the City signs the Agreement.

You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance Bond, Payment Bond, and Certificates of Insurance within ten (10) calendar days from the date of this Notice.

If you fail to execute said Agreement, together with the required Certificates of Insurance and Bonds, within ten (10) calendar days from the date of this Notice, City will be entitled to consider all your rights arising out of City's acceptance of your BID as abandoned and as a forfeiture of your Bid Deposit. The City will be entitled to all other rights and remedies as may be available to it at law.

You must return an acknowledged copy of this Notice of Award to the City, with the executed Agreement and required Certificates of Insurance and Bonds, within the above noted ten (10) calendar day period.

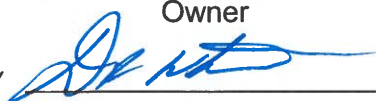
Dated this 10 day of November, 20 23.

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CITY OF PANAMA CITY BEACH

Owner

By  _____

Name: Drew Whitman

Title City Manager

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged

By _____

This the _____ day of _____, 20____.

Name _____

Title _____

[END OF SECTION 00080]



October 30, 2023

Ms. Kathy Younce – City Engineer
City of Panama City Beach
116 South Arnold Road
Panama City Beach, FL 32413

**Re: Alf Coleman Road Eastside Sidewalk
Contract Award Recommendation**

Dear Kathy,

The project Bid Opening was held at the City of Panama City Beach City Hall on October 30, 2023 at 2:00 P.M. Three firms submitted bids which were opened and the name of the firm was read aloud along with the Lump Sum Base Bid. The firm name and the Base Bids were then recorded on the Bid Tabulation Sheet.

We have reviewed the Bids and ECSC, LLC is the low bidder with a Lump Sum Base Bid of **\$676,527.52**.

It is the recommendation of Gortemoller Engineering, Inc. that Alf Coleman Road Eastside Sidewalk be awarded to ECSC, LLC as the responsive, low bidder.

If you have any questions or need additional information, please let me know.

Sincerely,
Gortemoller Engineering, Inc.

A handwritten signature in blue ink that reads 'Blake Furbee'.

Blake Furbee, P.E.
Project Engineer

**708 Thomas Drive
Panama City Beach, Florida 32408
(850) 249-2425 – www.gorteng.com**