

AGENDA ITEM SUMMARY

[] Regular

☐ Public Hearing

Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Amendment No. 1 with RJS Construction Group, Incorporated, to extend the term through February 2, 2019 for the annual contract for general building minor construction services on an “as-needed” basis for projects typically under \$100,000 each.

Summary: This Amendment extends the term of this Contractor's annual contract for Minor Construction services through February 2, 2019 to coincide with the term of the previously approved list of sixteen (16) contractors for this continuing contract. This continuing contract is an indefinite-quantity contract with a cumulative maximum value of \$9,000,000 across all the minor contractors. The Board originally approved the annual Contracts on February 3, 2015, and the original Contracts provided for an initial term of one (1) year with four (4) renewal options each for a period of one (1) year each. During the term of these Contracts, the county awarded \$200,767 in work orders to RJS Construction Group, Incorporated. RJS Construction Group, Incorporated is a Palm Beach County business. The Small Business Enterprise (SBE) participation goal established by the SBE Ordinance is 15%. RJS Construction Group, Incorporated has achieved 27.8% under this contract. The cumulative SBE participation for all work orders to-date is 47.8%. **(Capital Improvements)**

Countywide (LDC)

Background and Justification: These contracts were last bid in 2014 and the original list of sixteen (16) contractors that were prequalified to provide general construction services associated with repairs, improvements and renovations to County properties had been reduced to eight (8). During 2017, the pre-qualification process was re-opened and eleven (11) Contractors, who met the established criteria, were added to the list of the remaining eight (8) contractors already prequalified for this contract. Projects are bid among the pre-qualified participants. This contractor has been previously prequalified for this contract and submitted the renewal Amendment late, so was not included with the others. Work is awarded as work orders on a lump-sum, competitively quoted basis among the pool of pre-qualified Minor Construction contractors. The original terms were for one (1) year and allowed for four (4) additional one (1) year renewals. It is the consensus of Facilities Development and Operations that the seventeen contractors have successfully provided the services required by the County in a timely manner. They are in good standing and wish to continue to provide services.

Attachments:

Amendment No. 1

Recommended By: Jan

Department Director

7/14/18
Date

Approved By:

RBaker
County Administrator

2/28/18
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* _____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget:

Yes x No _____

Does this items include use of federal funds?

Yes _____ No x

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____ Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

* Potential maximum fiscal impact is \$9,000,000. Work Orders requiring BCC approval will be brought to the Board and fiscal impact will be addressed at that time; otherwise, funding will come from previously approved BCC projects.

C. Departmental Fiscal Review:

[Signature]

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 2/20/18
 OFMB
[Signature] 2/23/18
 Contract Development and Control

B. Legal Sufficiency:

[Signature] 2/27/18
 Assistant County Attorney

C. Other Department Review:

Department Director

AMENDMENT NO. 1 TO ANNUAL CONTRACT

This Amendment ("Amendment") to the Annual Contract for **Minor Construction** is made and entered into on _____, by and between Palm Beach County ("County"), a political subdivision of the State of Florida and RJS Construction Group, Incorporated, hereinafter referred to as "Contractor".

WITNESSETH

WHEREAS, on March 14, 2017, the parties hereto entered into the Annual Contract (R2017-0304) (hereinafter the "Annual Contract") under which the Contractor provides awarded work to the County for various projects as bid from time to time under the Annual Contract; and

WHEREAS, the County and the Contractor desire to amend certain contract conditions of the Annual Contract.

NOW THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the Parties agree as follows:

1. Contract Extension/Renewal. The parties hereby extend the term of the original contract through February 2, 2019 and increase the total dollar value by \$3,000,000 for a new total contract value of \$9,000,000.

2. Certification of No Material Changes. The Contractor by execution of this Amendment hereby certifies, represents, affirms and warrants that since it submitted its Qualification Application:

- a. there has been no material change in the management or ownership of the Contractor;
- b. there has been no material adverse change in the financial stability or financial resources of the Contractor;
- c. there has been no material change in the pending litigation or claims against the Contractor such that they would have a negative impact on the Contractor's ability to perform under the Contract;
- d. the Contractor has not been debarred or suspended by any government entity or placed on a convicted vendor list maintained by the State of Florida or any other government entity; and
- e. the Contractor continues to maintain all licenses and certifications required to perform under the Contract.



3. Contract Terms Affirmed. Except as set forth below, the terms and conditions of the Annual Contract shall remain in full force and effect and are hereby ratified and affirmed by the parties hereto.

Annual Contract Modifications and Additions. The following provisions of the Annual Contract are modified as follows:

A. Page 1 of the Annual Contract is amended to delete the definition of “Contract Documents” and replace it with the following definition:

The parties agree that the Contract Documents are defined to consist of the following documents that are incorporated herein by reference:

- *The Qualification Application Package;*
- *The Contract and any amendments thereto;*
- *General Conditions to the Contract;*
- *Work Orders and any Change Orders thereto;*
- *Special Conditions for each Work Order;*
- *Invitation for Quote/Bid, Instructions to Bidders and any Addenda thereto, Completed Quotation Form and Attachments, and Bid Bond (when required) for each Work Order;*
- *Public Construction Bond and Form of Guarantee (when required) for each Work Order; and*
- *Technical Specifications, Addenda, Drawings/Plans and any revisions thereto for each Work Order.*

B. The General Conditions Section of the Annual Contract is amended as follows:

1. General Condition 28 of the Annual Contract is revised and replaced in its entirety with the following provision:

GC-28 WARRANTY

Unless otherwise provided elsewhere in the Contract, all materials and equipment incorporated into any work covered by the Contract shall be new and, where not specified, of the highest grade of quality for their intended use, and all workmanship shall be in accordance with construction drawings and specifications.

Unless otherwise provided in the Contract, Contractor warrants all equipment, materials, and labor furnished or performed under this Contract, against defects in design, materials and workmanship for a period of twelve months (unless longer guarantees or warranties are provided for elsewhere in the Contract in which case the longer periods of time shall prevail) from and after substantial completion of the work under the Contract, regardless of whether the same were furnished or performed by Contractor or by any of its subcontractors of any tier. In the event that the Owner assumes partial utilization of portions of the work prior to completion of all Work, the Warranty for that portion shall also extend for twelve months from substantial completion of that portion of the Work, if and only if the Owner has exclusive use of the area. If the Owner does not have exclusive use of the area, the warranty period shall extend for twelve months from substantial completion of the last portion of the Work.

Upon receipt of written notice from Owner of any defect in any such equipment, materials, or labor during the applicable warranty period, due to defective design, materials or workmanship, the affected item or parts thereof shall be redesigned, repaired or replaced by Contractor at a time and in a manner

acceptable to Owner. Owner and Contractor agree that the provisions of Florida Statute Chapter 558 shall not apply to this Contract.

Contractor warrants such redesigned, repaired or replaced work against defective design, materials and workmanship for a period of twelve months from and after the date of acceptance thereof. Should Contractor fail to promptly make the necessary redesign, repair, replacement and tests, Owner may perform or cause to be performed the same at Contractor's expense.

Contractor shall perform such tests as Owner may require verification that such redesign, repairs and replacements comply with the requirements of this Contract. All costs incidental to such redesign, repair, replacement and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access, shall be borne exclusively by Contractor.

The Contractor shall commence work to remedy or replace the defective, deficient work within five (5) calendar days after receiving written (including transmittals by FAX or email) notice from the Owner. If the Contractor fails to remedy or remove or replace that work or material which has been found to be defective, then the Owner may remedy or replace the defective or deficient work at the Contractor's expense; provided, however, all repairs to natural gas, telephone, radio, computer security, water, electric, air conditioning services and all emergency services shall be commenced within twelve (12) hours of notification, or by 7:00 a.m. whichever is earlier, and Contractor shall complete the repairs in an expeditious manner befitting the nature of the deficiency. The Contractor shall immediately pay the expenses incurred by the Owner for remedying the defects. If the Owner is not paid within ten (10) calendar days, the Owner may pursue any and all legal or equitable remedies it may have against the Contractor.

The Contractor is required to provide a designated telephone number for warranty related emergencies which occur outside the normal workday. The Contractor is solely responsible for ensuring that all warranty work is completed in the manner described above. If the Owner agrees, in writing, a subcontractor may be the point of contact for notices regarding warranty items, but such agreement shall not absolve the Contractor of his responsibility.

The terms of this section shall not modify, restrict or limit the County's other available remedies or restrict, limit or be construed as the sole or exclusive remedy for defective performance or failure to meet Contract obligations. This section shall not relieve the Contractor of its responsibilities for the performance of the original work in accordance with the requirements of the Contract Documents and will not limit the County's remedies at law, in equity or under Contract.

Additionally, the terms of a later signed manufacturer's warranty shall not modify or abridge the Contractor's warranties (express or implied), Contractor's performance, or Contractor's duties and liabilities under the Contract Documents and shall not limit or restrict the County's remedies or damages at law, in equity, or under contract.

Contractor and its surety or sureties shall be liable for the satisfaction and full performance of the warranties as set forth in the Contract Documents and any damage to other parts of the Work caused by the Contractor's failure to perform pursuant to the Contract Documents and this general condition.

The provisions of this section shall survive the termination or expiration of this Contract.



2. General Condition 30 of the Annual Contract is revised and replaced in its entirety with the following provision:

GC 30 INDEMNITY

30.1 Contractor shall indemnify and hold harmless the Owner and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor and persons employed or utilized by the Contractor in the performance of this Contract.

30.2 To the extent permitted by, and in accordance with, F.S. 725.06, Contractor further agrees that "damages, losses and costs," includes fines, citations, court judgments, insurance claims, restoration costs or other liability, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor and persons employed or utilized by the Contractor in the performance of this Contract.

30.3 To the extent permitted by, and in accordance with, F.S. 725.06, for purposes of indemnity, the "persons employed or utilized by the Contractor" shall be construed to include, but not be limited to, the Contractor, its staff, employees, subcontractors, all deliverers, suppliers, furnishers of materials or services or anyone acting for, on behalf of, or at the request of the Contractor.

30.4 This clause shall survive termination of this Contract.

30.5 Contractor's indemnity and hold harmless obligations hereunder shall extend to all claims against County by any third party or third party beneficiary of this Contract and all liabilities, damages, losses and costs related thereto.

30.6 If any provision(s), or portion(s) of a provision(s) of this Section, or the application thereof to any person or circumstances shall, to any extent, be held to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provision(s), or part of the provision(s), shall not in any way be affected or impaired thereby; and if possible the invalid, illegal or unenforceable provision shall be interpreted to the fullest extent possible to be enforceable and to give effect to the intent manifested by the provision(s), or portion(s) thereof, held invalid, illegal or unenforceable.

3. The following new General Conditions are added to the Annual Contract:

GC 58 SUBSTANTIAL COMPLETION

58.1 The date of Substantial Completion is the date established by the Architect or Engineer (A/E) and approved by the Owner when the Project is sufficiently complete to permit the Owner to use it for its intended purpose and the items listed below are complete.

58.2 The Contractor shall notify the A/E in writing when the Contractor considers the Project Substantially Complete and attach a comprehensive list of incomplete work and items needing correction with dates indicating when the items listed will be completed.

58.3 Once the A/E has received notice and attachments from the Contractor, the A/E will promptly inspect the Work. The A/E may refuse to inspect the Work if the Work is obviously not substantially complete or when the Contractor's list is not complete.



58.4 The following items shall be completed prior to a request by the Contractor for inspection for Substantial Completion.

1. Certificate of Occupancy or Certificate of Completion, as applicable, shall be obtained from the proper Building Official.
2. All general construction completed.
3. All mechanical and electrical work complete, equipment and fixtures in place, connected, cleaned and ready for use.
4. All electrical circuits shall be scheduled in panels, and all panels and disconnect switches properly labeled.
5. All painting shall be completed; all signs installed.
6. All project components including floors, glass and metal work shall be cleaned.
7. All finish hardware shall be installed, and all doors shall be in good working order. All keys and blanks shall have been provided.
8. Project site shall be cleared of the Contractor's excess equipment, storage shacks, trailers, and/or building supplies. All temporary construction shall be removed.
9. All mechanical and electrical systems including Fire Alarm and Security, shall be complete, fully functional, and demonstrated to the Owner. The Fire Alarm system must be 100% complete without exception.
10. All operations and maintenance manuals for all equipment shall have been submitted.
11. Manufacturers' certifications and warranties shall be delivered to Owner.
12. All operations and maintenance training related literature, software and back-up disks shall have been provided.
13. All required spare parts as well as any special tools shall have been provided.
14. All HVAC testing and balancing reports shall have been submitted and approved.
15. The Project record drawings and specifications shall be submitted to Owner.

58.5 If Substantial Completion is not obtained at the inspection, called by the Contractor, for reasons which are the fault of the Contractor, the cost of any subsequent inspections requested by the Contractor for the purpose of determining Substantial Completion shall be the responsibility of the Contractor and shall be assessed against the final payment application.

58.6 Once Substantial Completion is achieved and within the time allowed by F.S. 218.70 et. seq., A/E and/or Owner will prepare the punch list required by the Local Government Prompt Payment Act. The punch list items shall be corrected by the Contractor within 30 calendar days and prior to any request for Final Inspection and Acceptance. The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the Contractor to complete the Work pursuant to the Contract.



GC 59 SEVERABILITY

59.1 If any provision(s), or portion(s) of a provision(s) of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provision(s), or part of the provision(s), shall not in any way be affected or impaired thereby; and if possible the invalid, illegal, or unenforceable provision shall be interpreted to the fullest extent possible to be enforceable and to give effect to the intent manifested by the provision(s), or portion(s) thereof, held invalid, illegal or unenforceable.

GC 60 PUBLIC RECORDS AND CONFIDENTIAL INFORMATION

60.1 *Public Records Requests.* Under Chapter 119, Florida Statutes (the Florida Public Records Law), a request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency.

60.2 *Required Procedures for Protecting Confidential and Exempt Information.*

A. Records Exempt from the Public Records Laws. The Florida Public Records Law provides for certain exemptions to the Florida's Public Records Law to protect the security of specific governmental facilities, employees and visitors. For the same security reasons, the County has the statutory obligation to protect such records from public disclosure and only disclose confidential information to a licensed engineer, architect or contractor. The purpose of this Section is to facilitate the Contractor's Work by making specific documents available to individuals/firms while implementing controls on the distribution of records or information which is confidential and/or exempt from the Florida Public Records Law.

B Confidential Information. For purposes of this Section, "Confidential Information" shall include all information or material that is confidential and/or exempt according to the Florida Public Records Law. The exemptions most relevant to the Contractor include, but are not limited to:

- Plans, blueprints, drawings and diagrams which depict the internal layout and structural elements of a building or other structure owned or operated by the County;
- Security system plans, including records, information, photographs, audio and visual representations, schematic diagrams, floor plans, surveys, as-built drawings, recommendations or consultations relating directly to the physical security of the facility or revealing security systems in whole or in part;
- Threat assessments;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security personnel, emergency equipment, security training; or otherwise containing narrative and/or graphic content of a security nature.

C. Obligations.

1. *Maintain the Confidentiality of the Confidential Information.* The Contractor has an obligation to maintain the confidential status of Confidential Information. The Contractor shall hold and maintain the Confidential Information in the strictest confidence for the sole and exclusive benefit of the County. The Contractor shall restrict access to Confidential Information to: 1) the Contractor's employees, and/or 2) licensed architects, engineers, contractors, subcontractors (Third Parties) for the sole purpose of providing services under



this Contract. Prior to releasing any Confidential Information to a Third Party, the Contractor shall require those Third Parties to execute nondisclosure restrictions at least as protective as those in this Section, and maintain a list of any Third Party to which the Contractor has distributed Confidential Information. **Other than as authorized above, the Contractor shall not, without prior written approval of County, publish, copy, or otherwise disclose to others any Confidential Information.**

2. *Disclosure Warning. If Confidential Information is in written form, the Contractor shall label or stamp the materials as they are created with the Disclosure Warning described below on each and every sheet of plans, documents or reports that contain exempt information. If the Contractor is distributing Confidential Information to authorized recipients, the materials and the correspondence related thereto should contain the following disclosure warning:*

DISCLOSURE WARNING. THIS DOCUMENT IS EXEMPT AND CONFIDENTIAL UNDER SEC. 119.071, FLORIDA STATUTES. ANY ENTITY OR PERSONS RECEIVING SUCH INFORMATION SHALL MAINTAIN THE EXEMPT STATUS OF THE INFORMATION UNLESS OTHERWISE AUTHORIZED BY THE COUNTY. THESE DOCUMENTS SHALL NOT BE DISTRIBUTED, LOANED OR COPIED WITHOUT THE WRITTEN PERMISSION OF THE COUNTY IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF FLORIDA LAW. THE COUNTY MUST BE ADVISED IMMEDIATELY AS TO ANY CHANGES IN CUSTODIAN FROM THOSE PERSONS LISTED IN CORRESPONDENCE FOR ORIGINAL DISTRIBUTION, IF THE DOCUMENTS ARE LOST OR STOLEN, OR IF THERE IS IMPROPER DISCLOSURE OR UNAUTHORIZED USE OF THE INFORMATION IN THE DOCUMENT. UPON COMPLETION OF USE, WORK, PROJECT, OR CONTRACT, THE CONTRACTOR/CONSULTANT SHALL SHRED OR BURN ANY DUPLICATE RECORDS.

3. *Identifying Correspondence that May Contain Exempt or Confidential Information. In order to assist in the identification of electronic records, i.e. email, which may be exempt from Public Records Requests and protect information that is exempt from disclosure, the Contractor (as either the writer or receiver of an electronic document which may contain confidential and/or exempt information) must use the letters "PREX" (in caps) as the first four letters of the subject line of the electronic document. The PREX identifier should be used if the email contains confidential and/or exempt information in the body and/or an attachment.*
4. *Notification of Improper Disclosure. County must be notified immediately if the Confidential Information is lost or stolen or of any improper disclosure or unauthorized use of the Confidential Information. The Contractor shall make a report to the County not more than seven (7) business days after the Contractor learns of such an improper disclosure or unauthorized use of the Confidential Information. The Contractor's report shall identify, to the extent known, the nature of the improper disclosure or unauthorized use, the Confidential Information disclosed or used, who made the disclosure of or used the information, what the Contractor has done or shall do to mitigate any harmful effects of the improper disclosure or unauthorized use, and what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or improper disclosure. The Contractor shall provide any other such information about the unauthorized use or improper disclosure as reasonably requested by the County. The Contractor shall take all steps the County deems advisable to mitigate, resolve and/or prevent the unauthorized use or improper disclosure of the Confidential Information.*



D. Survival. The nondisclosure provisions of this Section shall survive the termination of this Contract. The Contractor's duty to hold Confidential Information in confidence shall remain in effect until County sends the Contractor written notice releasing the Contractor from the provisions of this Section.

E. Enforcement. The Contractor understands that non-compliance with the terms of this Section may result in debarment pursuant to the Palm Beach County Code as well as subject itself to any other remedies available to the County in law or equity.

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, PLEASE CONTACT: BUSINESS AND COMMUNITY AGREEMENTS MANAGER, FACILITIES DEVELOPMENT & OPERATIONS, 2633 VISTA PARKWAY, WEST PALM BEACH, FL 33411 OR BY EMAIL AT FDORECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-233-0220.

GC 61 LIQUIDATED DAMAGES

For purposes of the Contract Documents, Liquidated Damages means damages assessed for the contractor's failure to complete the Work within the Contract Time, including any change(s) to Contract Time authorized by Change Order(s) and Written Amendment(s). Should the Contractor or, in the event of its default, the Surety fail to complete the Work within the Contract Time, the Contractor or, in the event of its default, the Surety shall pay to the County, not as a penalty, but as Liquidated Damages in the daily amount(s) established in the Bid Form.

The Contractor hereby agrees and affirms that the amounts specified in this section reflect a fair compensable value for damages suffered by the County as a result of Contractor's delay, and that said amounts are not a penalty nor shall ever be contested as reflecting the imposition of a penalty against the Contractor.

The County shall have the right to apply as payment on such Liquidated Damages any money on any Project that is due the Contractor by the County, and, to deduct Liquidated Damages either incrementally from progress payment(s) or the Final Payment.

Permitting the Contractor to continue and to finish the Work, or any part of it, after the expiration of Contract Time, shall in no way act as a waiver on the part of the County of the Liquidated Damages due under the Contract.

The number of days of default shall be determined by counting all calendar days. In case of default of the Contract and completion of the Work by the County, the Contractor and its Surety shall be liable for the Liquidated Damages under the Contract, but no Liquidated Damages shall be chargeable for any delay in the final completion of the Work by the County, due to an unreasonable action or delay on the part of the County.

GC 62 DISCLAIMER OF CONSEQUENTIAL DAMAGES

The County shall not be liable to the Contractor, whether in contract, tort, warranty or under any statute or on any other basis, for any consequential, incidental, indirect, special, punitive or exemplary damages suffered or incurred by the Contractor in connection with this Contract, even if the County has been advised of the possibility of such damages. Consequential damages shall include, by way of example and without limitation, opportunity costs, loss of use of facilities or other assets, lost profits, lost savings, lost business, lost bonding capacity, lost financing, lost reputation or lost goodwill. Consequential damages shall also include the consequential damages of Contractor's subcontractors.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to the Annual Contract to be executed as of the day and year first above written.

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

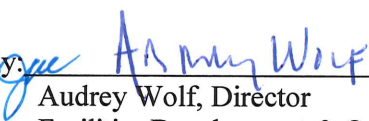
By: _____
Deputy Clerk

By: _____
Melissa McKinlay, Mayor

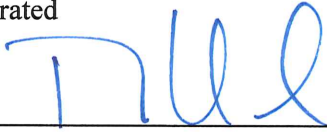
APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO THE TERMS
AND CONDITIONS

By:  _____
Assistant County Attorney

By:  _____
Audrey Wolf, Director
Facilities Development & Operations

CONTRACTOR: RJS Construction Group
Incorporated

By:  _____
Signature

Name: ROBERT SORENSEN

Title: DIRECTOR

 _____
Witness Signature
GRANT LASHLEY
Print Witness Name

(SEAL)