

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: June 4, 2019

Consent

Regular

Workshop

Public Hearing

Department: Engineering & Public Works
Submitted By: Engineering & Public Works
Submitted For: Roadway Production Division

EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a third amendment to the annual pathway and minor construction contract R2018-0012, Project No. 2017055, dated January 23, 2018, with Wynn & Sons Environmental Construction Co., Inc. (Wynn & Sons) to extend the expiration date from July 22, 2019 to January 22, 2021, increase the contract by \$3,265,000 and add the new Equal Business Opportunity Ordinance (EBO) language to the contract.

SUMMARY: Approval of this third amendment will increase Wynn & Sons contract from \$9,500,000 to \$12,765,000 and extend the expiration date from July 22, 2019 to January 22, 2021. The increased contract amount is based on updated estimates that exceed the current contract amounts to be expended throughout Palm Beach County (County) by the user departments. To date, tasks in the amount of \$5,429,036 have been authorized for Wynn & Sons. This third amendment will also add the new EBO Ordinance language to the contract. The contract was presented to the Goal Setting Committee on February 6, 2019 and a waiver of Affirmative Procurement Initiative was approved based upon insufficient qualified Small/Minority/Women Business Enterprises to provide the goods or services required by the contract available in the County despite every reasonable attempt to locate them. This bid was solicited on October 10, 2017, prior to the effective date of the EBO Ordinance and pursuant to the SBE Ordinance requirements. This is the last allowable extension, as the contract provides that it may not exceed 36 months total contract time. After this 18 month extension, the contract will be resolicited. Countywide (YBH)

Background and Justification: The contract consists of pathway and minor construction on an as needed basis. The first amendment, R2018-0820, added reporting language. The second amendment, R2019-0014, extended the expiration date from January 22, 2019 to July 22, 2019.

Attachments:

- 1. Wynn & Sons Third Amendment to the Annual Pathway Contract (2)

Recommended by: *[Signature]* **County Engineer** 4/25/2019
Date

Approved By: *[Signature]* **Assistant County Administrator** 5/10/19
Date

**THIRD AMENDMENT TO THE ANNUAL PATHWAY AND MINOR
CONSTRUCTION CONTRACT PROJECT NO. 2017055
DATED JANUARY 23, 2018 BY AND BETWEEN
WYNN & SONS ENVIRONMENTAL CONSTRUCTION CO., INC.,
AND PALM BEACH COUNTY**

THIS THIRD AMENDMENT to the ANNUAL PATHWAY AND MINOR CONSTRUCTION Contract dated January 23, 2018 (R2018-0012), hereinafter "CONTRACT" by and between Wynn & Sons Environmental Construction Co., Inc., hereinafter "CONTRACTOR" and Palm Beach County, a political subdivision of the state of Florida, hereinafter "COUNTY", (individually "Party" and collectively "Parties").

WITNESSETH

WHEREAS, on January 23, 2018, the CONTRACTOR and COUNTY entered into the twelve month CONTRACT; and

WHEREAS, by the FIRST AMENDMENT (R2018-0820), the CONTRACTOR and the COUNTY mutually agreed to amend the CONTRACT terms to add additional reporting language, with all original terms, conditions and unit prices adhered to, except as thereby amended; and

WHEREAS, by the SECOND AMENDMENT (R2019-0014), the CONTRACTOR and the COUNTY mutually agreed to amend the CONTRACT terms to extend the expiration date of the CONTRACT from January 22, 2019 to July 22, 2019, with all original terms, conditions and unit prices adhered to, except as thereby amended; and

WHEREAS, the CONTRACT provides that the CONTRACT may be amended, upon mutual written agreement of the Parties; and

WHEREAS, a review of upcoming projects and tasks have determined that remaining available funds are insufficient to meet projected needs; and

WHEREAS, by this THIRD AMENDMENT, the CONTRACTOR and the COUNTY mutually agree to amend the CONTRACT, as provided herein.

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

1. The above recitations are true and correct and incorporated herein.
2. The CONTRACT, between the CONTRACTOR and the COUNTY is hereby amended to extend the expiration date of the CONTRACT from July 22, 2019 to January 22, 2021.

3. The CONTRACT, between the CONTRACTOR and the COUNTY is hereby amended to increase the amount by \$3,265,000, from \$9,500,000 to \$12,765,000.
4. The **Nondiscrimination** section on **page ITB-1** of the Contract is hereby deleted in its entirety and replaced with the following:

COMMERCIAL NON-DISCRIMINATION: The Contractor represents and warrants that it will comply with the County's Commercial Nondiscrimination Policy described in Resolution 2017-1770, as amended. As part of such compliance, the Contractor shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Contractor retaliate against any person for reporting instances of such discrimination. The Contractor shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. The Contractor understands and agrees that a material violation of this clause shall be considered a material breach of any resulting contract and may result in termination of the contract, disqualification or debarment of the Contractor from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

All subcontractor agreements shall include this commercial non-discrimination clause.

5. The **Maintenance of Payroll Records** section and the **Reporting Payroll** section on **page LW-1** of the Contract are hereby deleted in their entirety and replaced with the following:

Maintenance of Payroll Records

Each non-county employer shall maintain payroll records and basic records relating thereto for each employee, and shall preserve them for a period of four (4) years, after Project completion date, or such longer time as may be required in other provisions of this Contract. The records shall contain:

1. Each employee's name and address;

2. Each employee's job title and classification;
3. The number of hours worked each day by each employee;
4. The gross wages and deductions made for each employee; and
5. Annual wages paid to each employee.

Reporting Payroll:

Every six (6) months the non-county employer shall certify and file with the Construction Coordination Division if the non-county employer is a general Contractor, or with the general Contractor if the non-county employer is a subcontractor, certification that all non-county employees who worked on each construction Contract during the preceding six (6) month period were paid the living wage in compliance with this Ordinance. Upon the County's request, the non-county employer shall produce for inspection and copying the payroll records for any or all of its employees for the prior four (4) year period, or such longer time as may be required in other provisions of this Contract.

6. The **Local Government Prompt Payment Act** section on **pages SP-8 and SP-9** of the Contract is hereby deleted in its entirety and replaced with the following:

Local Government Prompt Payment Act:

In accordance with the Local Government Prompt Payment Act (F.S. 218.70, *et seq*), the Contractor is hereby notified of the following:

The Contractor will be notified at the Pre Construction Meeting the manner in which pay requests are to be prepared and directed to the Department. For a pay request to be deemed acceptable, the Contractor must provide the following:

Pay Request No. 1

- OEBO Schedule 3
- Certification of Compliance with the Living Wage Ordinance

Pay Request No. 2 and all others following, but not including the Final

- OEBO Schedule 3
- OEBO Schedule 4
- Disbursement of Previous Periodic Payments to Subcontractors
- Certification of Compliance with the Living Wage Ordinance

Final Pay Request

- OEBO Schedule 3
- OEBO Schedule 4
- Disbursement of Previous Periodic Payments to Subcontractors

- Disbursement of Final Payment to Subcontractors
- Form 1
- Form 2 including Bonding Affidavit
- Record of Construction Materials Affidavit
- Certification of Compliance with the Living Wage Ordinance
- Equal Business Opportunity (EBO) Final Participation Form
- Release and Concurrence of Final Payment Amount
- Form of Guarantee

A single list of items (Punch List) required to render the Work complete, satisfactory, and acceptable will be prepared by the Department. The Punch List shall be developed as the result of a joint inspection of the Work, conducted within 30 Calendar Days after reaching substantial completion, by the Contractor, together with the Department, with all unsatisfactory Work listed on the Punch List. The Punch List shall be provided to the Contractor within 5 Working Days of the joint inspection.

If the pay request and support data are not approved, the Contractor is required to submit new, revised or missing information according to the Department's instructions. Otherwise, the Contractor shall prepare and submit to Department an invoice in accordance with the estimate, as approved. In the event any dispute with respect to any payment or pay request cannot be resolved between the Contractor and the Department, Contractor shall, in accordance with the alternative dispute resolution requirements of Florida Statute section 218.76, demand in writing a meeting with and review by the County Engineer. In place of the County Engineer, the Deputy County Engineer may conduct the meeting and review. Such meeting and review shall occur within forty-five (45) Working Days of receipt by the Department of Contractor's written demand. The County Engineer, or Deputy County Engineer, shall issue a written decision on the dispute within fifteen (15) Working Days of such meeting. This decision shall be deemed the Department's final decision for the purposes of the Local Government Prompt Payment Act.

Contractor must remit undisputed payment due for labor, services, or materials furnished by subcontractors and suppliers hired by the Contractor, within 10 days after the Contractor's receipt of payment from the Department, pursuant to Section 218.70 et seq., Florida Statutes. Contractor shall provide subcontractors and suppliers hired by Contractor with a written notice of disputed invoice within 5 business days after receipt of invoice which clearly states the reasons for the disputed invoice.

7. The following VSS Registration Required paragraph is hereby added to the **Instructions to Bidders** section of the Contract:

VSS REGISTRATION REQUIRED

Prior to Contract award or renewal ("Award"), Contractor must register in the County's Vendor Self Service ("VSS") at

<https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>.

If Contractor intends to use subcontractors, Contractor must also ensure that all subcontractors are registered as vendors in VSS prior to Contract Award. All subcontractor agreements must include a contractual provision requiring that the subcontractor register in VSS. County will not finalize Contract Award until Contractor has certified that the Contractor and all of its subcontractors are registered in VSS.

8. The first paragraph on **Proposal Form page P-10** is hereby deleted in its entirety and replaced with the following:

The Contractor acknowledges that Addendum 1 has been received and that related costs are reflected in the submitted bid.

The Contractor hereby certifies and agrees that the following information is correct: In preparing its response to the Solicitation, the Contractor has considered all proposals submitted from qualified, potential Subcontractors and suppliers, and has not engaged in "discrimination" as defined in the County's Commercial Nondiscrimination Policy as set forth in Resolution 2017-1770 as amended, to wit: discrimination in the solicitation, selection or commercial treatment of any Subcontractor, vendor, supplier or commercial customer on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information, or on the basis of any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners; provided that nothing in this policy shall be construed to prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that have occurred or are occurring in the County's relevant marketplace of Palm Beach County. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination." Without limiting any other provision of the solicitation, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the County to reject the proposal submitted by the Contractor for this Solicitation, and to terminate any contract awarded based on the response. As part of its proposal, the Contractor shall provide to the County a list of all instances

within the immediate past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Florida that the Contractor discriminated against its Subcontractors, vendors, suppliers or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken. As a condition of submitting a proposal to the County, the Contractor agrees to comply with the County's Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended.

The Contractor further agrees to perform all necessary force account Work, as provided for in the General Provisions, and to execute the Contract and return to the County, along with a Contract Bond and Certificate of Insurance within fourteen (14) Working Days of the date of the Letter of Intent to Award and to commence Work with adequate forces and Equipment within fourteen (14) Calendar Days of the date set forth in the Notice to Proceed and to fully complete all contracted Work under the same in accordance with Contract Documents within the Contract Time.

9. **Section 3-8 Audit of Contractor's Records** of the **General Provisions** of the Contracts hereby added as follows:

3-8 Audit of Contractor's Records DELETE AND INSERT THE FOLLOWING:

Upon execution of the Contract, the Department reserves the right to conduct an audit of the Contractor's records pertaining to the project. The Department or its representatives may conduct an audit, or audits, at any time prior to final payment, or thereafter pursuant to 5-13. The Department may also require submittal of the records from either the Contractor or any subcontractor or material supplier. As the Department deems necessary, records include all books of account, supporting documents, and papers pertaining to the cost of performance of the Work. Retain all records pertaining to the Contract for a period of not less than four years from the date of the Engineer's final acceptance of the project, unless a longer minimum period is otherwise specified. Upon request, make all such records available to the Department or its representative(s). For the purpose of this Article, records include but are not limited to all books of account, supporting documents, and papers that the Department deems necessary to ensure compliance with the provisions of the Contract Documents. If the Contractor fails to comply with these requirements, the Department may disqualify or suspend the Contractor from bidding on or working as a subcontractor on future Contracts. Ensure that the subcontractors provide access to their records pertaining to the project upon request by the Department. Comply with Section 20.055(5), Florida Statutes, and incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

10. The Small Business Enterprise Bid Document Language, pages **SBE-1 through SBE-4**, are hereby deleted in their entirety and replaced with the following:

Equal Business Opportunity Program

1. Policy. It is the policy of the Board of County Commissioners of Palm Beach County, Florida, (the Board) that all segments of its business population, including, but not limited to, small, local, minority and women owned businesses, have an equitable opportunity to participate in the County's procurement process, prime contract and subcontract opportunities. To that end, the Board adopted an Equal Business Opportunity Ordinance which is codified in Sections 2-80.20 through 2-80.30 (as may be amended) of the Palm Beach County Code, (EBO Ordinance) which sets forth the County's requirements for the EBO program, and which is incorporated in this solicitation. The provisions of the EBO Ordinance are applicable to this renewal, and shall have precedence over the provisions of this renewal in the event of a conflict.

1.2 Definitions. The following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, "any" includes "all," "and" includes "or." Capitalized terms are defined as set forth in the EBO Ordinance, and in the Contract.

- A. "prime" and "prime contractor" mean, refer, and relate to "Prime Contractor," as defined in the EBO Ordinance, and to "Bidder" and "Contractor," as defined in the Contract, and as applicable.
- B. "solicitation" and "solicit" mean, refer, and relate to Advertisement for Bid, as defined in the Contract.
- C. "bid" means, refer, and related to a solicitation, renewal, and amendment of a contract.
- D. "bidder" mean, refers, and relates to "contractor" as defined in the Contract, and as applicable.

2. Affirmative Procurement Initiatives (APIs). A waiver of API requirements has been approved for this Contract.

3. Contractor is required to submit with the renewal the appropriate EBO schedules. EBO documentation to be submitted is as follows:
OEBO Forms are available at the following website

<http://discover.pbcgov.org/oebo/Pages/Compliance-Programs.aspx>

Schedule 1 - List of All Proposed Subcontractors, including S/M/WBE Participation A completed Schedule 1 shall list the names of **all** subcontractors, including S/M/WBE subcontractors, intended to be used in performance of the contract, if awarded. This schedule shall also be used if an S/M/WBE prime bidder is utilizing any subcontractors.

Schedule(s) 2 - Letter(s) of Intent to Perform as a Subcontractor, including S/M/WBE Subcontractors

A Schedule 2 for each subcontractor, including each S/M/WBE subcontractor, listed on Schedule 1, shall be completed and executed by the proposed subcontractor. The type of Work to be performed by each subcontractor and the dollar value or percentage shall also be specified. Additional copies may be made as needed. A completed Schedule 2 is a binding agreement between the prime contractor and the subcontractor and should be treated as such.

Completed and submitted EBO forms are incorporated into and made a part of the Contract Documents.

4. Responsibilities after Contract Renewal. The Contractor is required to submit accurate progress payment information with each pay application regarding each of its subcontractors, including S/M/WBE subcontractors. The Department shall audit the reported payments to S/M/WBE and non-S/M/WBE subcontractors to ensure that the Contractors' reported subcontract participation is accurate. Absent a waiver from the Office of EBO, a Contractor's failure to reach the required level of S/M/WBE subcontracting shall be considered a material breach of contract. In the event of Contractor non-compliance, the Contractor shall be subject to any penalties and sanctions available under the terms of the EBO Ordinance, its contract with the County, or by law.

The Contractor shall submit the following forms with each pay application:

Schedule 3 – Subcontractor Activity Form. This form shall be submitted by the prime contractor with each payment application when subcontractors, including S/M/WBE subcontractors, are utilized in the performance of the contract. This form shall contain the names of all subcontractors, including S/M/WBE subcontractors, specify the subcontracted dollar amount for each subcontractor approved change orders, revised subcontractor contract

amount, including S/M/WBE contract amount, amount drawn this period, amount drawn to date, and payments to date issued to subcontractors. This form is intended to be utilized on all non-professional services contracts.

Schedule 4 – Subcontractor Payment Certification, including S/M/WBEs. A Schedule 4 for **each subcontractor**, including each S/M/WBE, shall be completed and signed by each subcontractor, including each S/M/WBE, after receipt of payment from the prime. The prime shall submit this Schedule 4 with each payment application submitted to the County to document payment issued to a subcontractor in the performance of the Contract.

The Contractor shall submit an S/M/WBE Activity Form (Schedule 3) and Subcontractor Payment Certification Forms (Schedule 4) with each payment application. **Failure to provide these forms may result in a delay in processing payment or disapproval of the invoice until they are submitted.** The S/M/WBE Activity Form (Schedule 3) is to be filled out by the Prime Contractor and the Subcontractor Payment Certification Form (Schedule 4) is to be executed by each subcontractor to verify receipt of payment.

Upon letter notification by the County that the payment tracking system is automated, the prime contractor is required to input all subcontractor payment information directly into the County's contract information system prior to submitting a payment application.

5. EBO Program Compliance, Enforcement, Penalties. Under the EBO Ordinance, the Office of EBO is required to implement and monitor S/M/WBE utilization, if any, during the term of any contract resulting from this solicitation. It is the County's policy that S/M/WBEs shall have the maximum feasible opportunity to participate in the performance of County contracts. All Bidders are required to comply with the EBO Ordinance, which is incorporated herein by reference.

The EBO Office and the Department shall have the right to request and review Contractor's books and records to verify Contractor's compliance with the Contract, adherence to the EBO Program and its Bid. The EBO Office and the Department shall have the right to interview subcontractors and workers at the work site to determine Contract compliance. Contractor shall retain all books and records pertaining to this Contract, including, but not limited to, subcontractor payment records, for four (4) years after project completion date, or such longer time as may be required in other provisions of this Contract, and make such records available for inspection in Palm Beach

County by the EBO Office and the County at any reasonable time during the four (4) years.

The Director of the Office of EBO or designee may require such reports, information, and documentation from Contractor as are reasonably necessary to determine compliance with the EBO Ordinance requirements. Contractor shall correct all noncompliance issues within 15 calendar days of a written notice of noncompliance by the contracting department or the EBO Office. If the Contractor does not resolve the non-compliance within 15 days of receipt of written notice of non-compliance, then the Director of the Office of EBO or designee may impose upon the non-complying party any or all of the following penalties:

- a. Suspension of contract;
 - b. Withholding of funds;
 - c. Termination of contract based upon a material breach of contract pertaining to EBO Program compliance;
 - d. Suspension or Debarment of a respondent or bidder, contractor or other business entity from eligibility for providing goods or services to the County for a period not to exceed three (3) years; and
 - e. Liquidated damages equal to the difference in dollar value of S/M/WBE participation as committed to in the contract, and the dollar value of S/M/WBE participation as actually achieved.
11. It is the intent of the Parties hereto that this THIRD AMENDMENT shall not become binding until the date executed by the COUNTY.
 12. Except as hereby amended, changed or modified, all other provisions of the CONTRACT dated January 23, 2018, as amended on June 5, 2018 (R2018-0820) and January 15, 2019 (R2019-0014), shall remain in full force and effect.

THIS SPACE LEFT INTENTIONALLY BLANK.

IN WITNESS WHEREOF, the Parties have caused this THIRD AMENDMENT to contract R2018-0012 to be executed and sealed this _____ day of _____, 2019.

ATTEST:
SHARON R. BOCK
Clerk and Comptroller

PALM BEACH COUNTY, a Political
Subdivision of the State of Florida
Board of County Commissioners

By: _____
Deputy Clerk

By: _____
Mack Bernard, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

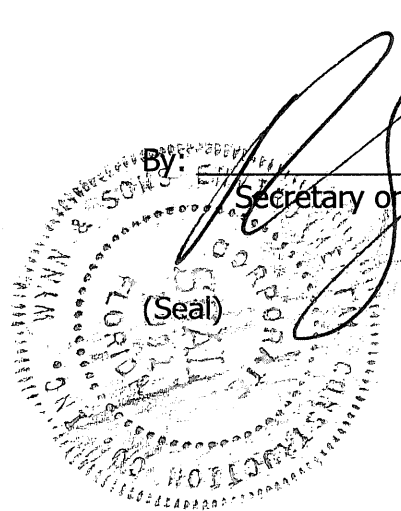
APPROVED AS TO TERMS
AND CONDITIONS

By: ^{ybh} _____
Yelizaveta B. Herman
Assistant County Attorney

By: [#] Omelio A. Fernandez
Engineering

ATTEST:

Wynn & Sons Environmental
Construction Co., Inc.
Contractor

By: [Signature]
Secretary or Asst. Secretary
(Seal)


By: [Signature]
(Signature)

DANIEL R. Wynn president
(Print Name and Title)