

**AGREEMENT FOR
REMOVAL OF DERELICT AND ABANDONDED VESSELS**

THIS AGREEMENT FOR REMOVAL OF DERELICT AND ABANDONDED VESSELS (“Agreement”) is made and entered into as of the date of execution by both parties, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and **TSI Disaster Recovery LLC**, a Florida corporation authorized to do business in the State of Florida, whose address is 1311 Indiana Ave. Saint Cloud, FL 34769, and whose Federal tax identification number is 26-2658624, hereinafter referred to as "Vendor."

WITNESSETH

WHEREAS, the County intends to purchase services related to **Removal of Derelict and Abandoned Vessels** from the Vendor for specific projects as determined by the County (the "Purchase"); and,

WHEREAS, the County issued a solicitation, **RFP170338LKD** on July 14, 2017 (the "Solicitation"); and,

WHEREAS, the County evaluated the responses received and found the Vendor qualified to provide the necessary services; and,

WHEREAS, the County posted a Notice of Intended Decision Proposal Action on September 13, 2017; and,

WHEREAS, the Vendor is one of a pool of firms approved to provide services for the Purchase, the County shall award projects as needed, and the Vendor understands and agrees that no work is guaranteed under this Agreement; and,

WHEREAS, the Vendor has reviewed the services to be supplied pursuant to this Agreement and is qualified, willing and able to provide all such services in accordance with its terms.

NOW, THEREFORE, the County and the Vendor, in consideration of the mutual covenants contained herein, do agree as follows:

I. PRODUCTS AND SERVICES

- A. The Vendor agrees to diligently provide all services for the Purchase in accordance with the Scope of Services made part of this Agreement as Exhibit A, attached hereto and incorporated herein. Vendor shall comply strictly with all of the terms and conditions of the Solicitation, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.

II. TERM AND DELIVERY

- A. This Agreement shall commence immediately upon execution by both the County and the Vendor, and shall continue for a period of one (1) year. The Agreement may be renewed for up to three (3) additional one (1) year periods upon mutual written agreement of the County and the Vendor.
- B. A purchase order shall be issued by the County before commencement of any work or purchase of any services related to this Agreement.
- C. Products and services shall be delivered in accordance with Exhibit B, Fee Schedule, attached hereto and incorporated herein. The schedule shall commence on the date of the purchase order.

III. COMPENSATION AND PAYMENT

- A. The County shall pay the Vendor in accordance with the terms and conditions of this Agreement for providing all products and services as set forth in Exhibit A, and further described in Exhibit B, Fee Schedule, attached hereto and incorporated herein. Said total amount to be all inclusive of costs necessary to provide all services as outlined in this Agreement, and as supported by the Vendor's submittal in response to the Solicitation, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.
- B. Notwithstanding the preceding, Vendor shall not make any deliveries or perform any work under this Agreement until receipt of a purchase order from the County. Vendor acknowledges and agrees that no minimum order or amount of product or work is guaranteed under this Agreement and County may elect to issue no purchase orders. If a purchase order is issued, the County reserves the right to amend, reduce, or cancel the work authorization in its sole discretion.
- C. All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of nonappropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Vendor on fifteen (15) days' prior written notice, but failure to give such notice will be of no effect and the County will not be obligated under this Agreement beyond the date of termination.

IV. METHOD OF PAYMENT

- A. The County shall pay the Vendor in accordance with the Local Government Prompt Payment Act, §218.70, et seq. F.S., as amended from time to time, upon receipt of the Vendor's invoice and written approval of same by the County indicating that the products and services have been provided in conformity with this Agreement.
- B. The Vendor shall submit an invoice for payment to the address indicated on the purchase order on a monthly basis for those specific products and services as described in Exhibit A (and the corresponding fees as described in Exhibit B) that were provided during that invoicing period.

V. MODIFICATIONS

No changes to this Agreement or the performance contemplated hereunder will be made unless the same are in writing and executed by both the Vendor and the County.

VI. LIABILITY OF VENDOR

- A. The Vendor shall indemnify and hold harmless Lee County Government from liabilities, damages, losses, and costs, including but not limited to attorney's reasonable fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Vendor and persons employed or utilized by the Vendor in the performance of this Agreement.
- B. This section shall survive the termination or expiration of this Agreement.

VII. VENDOR'S INSURANCE

- A. Vendor shall procure and maintain insurance as specified in Exhibit C, Insurance Requirements, attached hereto and made a part of this Agreement.
- B. Vendor shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverage (including endorsements) and limits as described in Exhibit C. These requirements, as well as the County's review or acceptance of insurance maintained by Vendor, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Vendor under this Agreement. Insurance carriers providing coverage required herein shall be licensed to conduct business in the State of Florida and shall possess a current A.M. Best's Financial Strength Rating of B+ Class VII or better. No changes are to be made to these specifications without prior written specific approval by County Risk Management.

VIII. PERFORMANCE AND PAYMENT BOND(S)

- A. The Vendor shall procure performance and payment bond(s) in accordance with Exhibit D.

IX. RESPONSIBILITIES OF THE VENDOR

- A. The Vendor shall be responsible for the quality and functionality of all services performed by or at the behest of the Vendor under this Agreement. The Vendor shall, without additional compensation, correct any errors or deficiencies in its service, or if directed by County, supply a comparable replacement service.
- B. The Vendor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Vendor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- C. The Vendor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- D. Vendor specifically acknowledges its obligations to comply with §119.0701, F.S., as amended from time to time, with regard to public records, and shall:
 - 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
 - 2) upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 Florida Statutes or as otherwise provided by law;
 - 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
 - 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Vendor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically

shall be provided to the County in a format that is compatible with the information technology system of the County.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901; publicrecords@leegov.com; <http://www.leegov.com/publicrecords>.

- E. The Vendor is, and will be, in the performance of all work, services and activities under this Agreement, an independent Vendor. Vendor is not an employee, agent or servant of the County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement will be at all times, and in all places, subject to the Vendor's sole direction, supervision and control. The Vendor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Vendor's relationship and the relationship of its employees to the County will be that of an independent Vendor and not as employees of the County. The Vendor will be solely responsible for providing benefits and insurance to its employees.

X. TIMELY PERFORMANCE OF SERVICES

- A. The Vendor shall ensure that all of its staff, Vendors and suppliers involved in the delivery of the services are fully qualified and capable to perform their assigned tasks.
- B. The personnel assigned by the Vendor to perform the services pursuant to this Agreement shall comply with the terms set forth in this Agreement.
- C. The Vendor specifically agrees that all services shall be delivered within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" is deemed to be any unforeseeable and unavoidable cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of the parties.

XI. COMPLIANCE WITH APPLICABLE LAW

This Agreement will be governed by the laws of the State of Florida. Vendor shall promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the services to be

performed hereunder and in effect at the time of performance. Vendor shall conduct no activity or provide any service that is unlawful or offensive.

XII. TERMINATION

- A. The County shall have the right at any time upon fifteen (15) days' written notice to the Vendor to terminate this Agreement in whole or in part for any reason whatsoever. In the event of such termination, the County will be responsible to Vendor only for fees and compensation earned by the Vendor, in accordance with Section III, prior to the effective date of said termination. In no event shall the County be responsible for lost profits of Vendor or any other elements of breach of contract.
- B. After receipt of a notice of termination, except as otherwise directed, the Vendor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all Vendors and subcontracts; and settle all outstanding liabilities and claims.
- C. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Vendor's obligations under this Agreement.

XIII. DISPUTE RESOLUTION

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- D. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- E. Unless otherwise agreed in writing, the Vendor will be required to continue all obligations under this Agreement during the pendency of claim or dispute

including, but not limited to, actual period of mediation or judicial proceedings.

XIV. STOP WORK ORDER

The County may, at any time, by written order to the Vendor, require the Vendor to stop all or any part of the work called for by this Agreement. Any order shall be identified specifically as a stop work order issued pursuant to this clause. This order shall be effective as of the date the order is delivered to the Vendor. Upon receipt of such an order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. The Vendor shall not resume work unless specifically so directed in writing by the County. The County may take one of the following actions:

1. Cancel the stop work order; or
2. Terminate the work covered by the order; or
3. Terminate the Agreement in accordance with provisions contained in Section XIII.

In the event the County does not direct the Vendor to resume work, the stop work order may be converted into a notice of termination for convenience pursuant to Section XIII. The notice period for such termination shall be deemed to commence on the date of issuance of the stop work order. In the event the County does not direct the Vendor to resume work within ninety (90) days, the Vendor may terminate this Agreement.

XV. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. The Vendor shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without the prior written consent of the County, except that claims for the money due or to become due to the Vendor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the County.

- C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
- D. The failure of the County to enforce one or more of the provisions of the Agreement may not be construed to be and is not a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
- E. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- F. Neither the County's review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- G. If the Vendor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- H. Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

Vendor's Representative:

Name: 
 Title: MEMBER
 Address: 1311 Indiana Ave
St. Cloud, FL 34769
 Telephone: 407 891 8005
 Facsimile: 407 891 9005
 E-mail: info@TSIdisaster.com

County's Representatives:

Names:	<u>Roger Desjarlais</u>	<u>Mary Tucker</u>
Titles:	<u>County Manager</u>	<u>Director of Procurement Management</u>
Address:	<u>P.O. Box 398</u>	
	<u>Fort Myers, FL 33902</u>	
Telephone:	<u>239-533-2221</u>	<u>239-533-8881</u>
Facsimile:	<u>239-485-2262</u>	<u>239-485-8383</u>
E-Mail:	<u>rdesjarlais@leegov.com</u>	<u>mtucker@leegov.com</u>

- I. Any change in the County's or the Vendor's Representative will be promptly communicated by the party making the change.
- J. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.

K. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:

1. Agreement
2. County's Purchase Order
3. Solicitation # RFP170338LKD
4. Vendor's Submittal in Response to Solicitation # RFP170338LKD

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

TSI Disaster Recovery LLC

Signed By: *Amy Hartman*

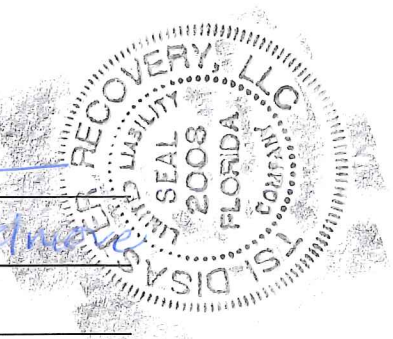
Signed By: *Henry W. ...*

Print Name: Amy Hartman

Print Name: Henry W. ...

Title: MGMR

Date: 10-13-2017



LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

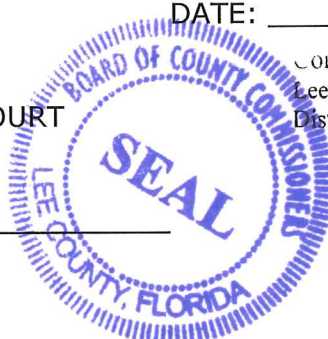
BY: *Cecil L. Pendergrass*
CHAIR

DATE: 12-15-17

Commissioner Cecil L. Pendergrass
Lee County Board of County Commissioners
District 2

ATTEST:
CLERK OF THE CIRCUIT COURT
Linda Doggett, Clerk

BY: *Theresa King*
DEPUTY CLERK



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: *A.C. Lira*
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A SCOPE OF SERVICES

Vendor shall provide removal of derelict and abandoned vessels services in accordance with Solicitation No. RFP170338LKD.

Removal for Disposal

- Vendor is responsible for transportation of abandoned and derelict vessels to the Lee County Solid Waste Transfer Station or the Lee/Hendry County Regional Landfill ONLY.
- All landfill and or transfer station receipts must be submitted to the County with the invoice for payment as documentation of proper vessel disposal. Photo documentation in digital format of removal and disposal is required for each vessel. Landfill and/or transfer station receipts and photos must identify each abandoned and derelict vessels shown/represented in photo and on receipt using Lee County abandoned vessel case number.
- All anchors found with vessel removed by Vendor shall be returned to Lee County Division of Natural Resources Marine Services program at the conclusion of work.

Removal for Reefing

- Vendor is responsible for the following actions as specified in the Solicitation Documents:
 - Transportation of abandoned and derelict vessels to a site designated by the County. Vessel must be properly stabilized on site at the direction of the County.
 - Preparation of vessel for reefing as directed by the County.
 - Transportation of vessel offshore to reef drop site as designated by the County.
 - Other actions as may be necessary for safe deployment to the reef site as specified in the quote request documents.
 - All anchors found with vessel removed by Vendor shall be returned to Lee County Division of Natural Resources Marine Services program at the conclusion of work.

The Vendor is responsible for any damage to the environment, persons or property, which occurs as a result of their work related to the removal.

The condition of the abandoned and derelict vessel(s) at the time of removal is not warranted by the County in any way. It is the Vendor's responsibility to inspect the vessel(s) prior to providing a quote. The Vendor must promptly notify the County of any condition at the site(s) that differs substantially from those indicated or referred to in the incident report(s) or information provided. The County will review the conditions and advise the Vendor of its recommendations prior to submittal of quote or the Vendor proceeding further.

EXHIBIT A SCOPE OF SERVICES

Inspections

The Vendor shall make provisions to have the Lee County Project Manager or their designee present at the work site at all times during removal of the vessel(s). The County Project Manager will coordinate monitoring of removal and disposal activities between the Vendor and the County or the County's designee. The Vendor must give the County a minimum of seventy-two (72) hours advance notice of its work schedule or any schedule changes that require the presence of the Project Manager. Failure to provide timely notice to the County may result in payment being withheld by the County.

Methods

The Vendor shall use suitable modern equipment of size and type necessary for the satisfactory removal and disposal of the vessel(s). All work, including specialized equipment operation shall be performed by competent employees, experienced and qualified to do the work specified. All work must be performed in accordance with the best commercial practices and without any unnecessary delays. Vendors must demonstrate that they have appropriate facilities, equipment, and trained personnel to properly remove and dispose of vessels without causing unnecessary risk to the environment, navigation, or adjacent property. Once a vessel has been moved from its initial location, disposal must not be delayed more than seven (7) calendar days without prior County approval. The vessel may not be stored at the water's edge or associated area without the County's consent.

Quote Process

- All Vendors shall submit quotes that detail prices for each vessel on any quote requests from the County. Quotes must include all labor, equipment, materials, disposal costs, and incidentals necessary to complete the job.
- Project completion time shall be designated in quote documents.
- Lee County will provide derelict and abandoned vessel reports/forms and/or Florida Fish and Wildlife Conservation Commission (FWC) Offense Incident Report(s) for specifics on the vessel(s) and location(s) (provided in decimal degree format), and/or the best available information at the time of request. Vendor is responsible to verify vessel location and condition prior to providing a quote. All debris associated with or related to the abandoned and derelict vessel(s) within a radius of 300' from the main body of the vessel(s) must be removed concurrently.

**EXHIBIT B
FEE SCHEDULE**

Payment for actual work completed shall be made in accordance with the terms of this Agreement.

The County will provide the Vendor with information, guidelines and rules to prepare and submit a quote that meets all criteria established for the removal(s).

Vendor shall provide quotes for the removal of the abandoned vessel or derelict vessel on an "as-needed" basis.

EXHIBIT C
INSURANCE REQUIREMENTS

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the Vendor's interest or liabilities. The following are the required minimums the Vendor must maintain throughout the duration of this Contract. The County reserves the right to request additional documentation regarding insurance provided.*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent Vendors, and contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations
\$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL)
\$500,000 bodily injury per person
\$1,000,000 bodily injury per accident
\$500,000 property damage per accident

- c. **Workers' Compensation** - Statutory benefits as defined by Chapter 440, Florida Statutes, encompassing all operations contemplated by this Contract or Agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers' Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease – policy limit

- d. **Maritime Remedies** – Coverage shall provide minimum limits of liability of \$1,000,000 per occurrence for General Maritime Laws, including but not limited to:

Maintenance & Cure;
Unseaworthiness;
Wrongful Death;
Jones Act;

EXHIBIT C
INSURANCE REQUIREMENTS

d. Maritime Remedies cont.

Death on the High Seas Act;
Longshore and Harbor Workers' Act;
Protection and Indemnity;

And/or any other state workers' compensation law, or other federal occupational disease law that your employees might be exposed to.

**The required minimum limit of liability shown in a. and b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies," in which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."*

Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the Contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

a. **The certificate holder shall read as follows:**

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902

- b. *"Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials" will be named as an **"Additional Insured"** on the General Liability policy, including Products and Completed Operations coverage.*

Special Requirements:

1. An appropriate "Indemnification" clause shall be made a provision of the Contract.
2. If applicable, it is the responsibility of the general Vendor to ensure that all subVendors comply with all insurance requirements.

End of Insurance Guide section

EXHIBIT D
PERFORMANCE AND PAYMENT BONDS

For each purchase order authorizing work for a cost of \$100,000.00 or more, the Vendor shall procure performance and payment bonds in accordance with this Agreement and the Solicitation.

- A. In accordance with Chapter 255.05, Florida Statutes, as may be amended from time to time, and Lee County Ordinance 95-2-102, as may be amended from time to time, public performance and payment bonds are to be issued in a sum equal to one-hundred (100%) percent of the total awarded purchase order amount by a surety company considered satisfactory by Lee County and otherwise authorized to transact business in the State of Florida.
- B. Any bonding company submitting a performance and payment bond to Lee County Government shall be licensed to transact a fidelity and surety business in the State of Florida.
- C. Public performance and payment bonds shall be properly executed by the surety company and Vendor and recorded with the Lee County Clerk of Court within seven (7) calendar days after notification by Lee County of the approval to award the purchase order. The Vendor is responsible for all fees and charges associated with the bonds, including the cost of recording.
- D. A clean irrevocable letter of credit or cash bond may be accepted by the County in lieu of the public performance and payment bonds.