

Form of Agreement

This Agreement made and entered into on the 17th day of December, 20 19 by and between Canaveral Construction Co. Inc., authorized and duly licensed to do business in the State of Florida, hereinafter called the Contractor, with an address of 3475 US1 MIMS, Fla., and the City of Cocoa, a municipal corporation organized and existing under the Laws of the State of Florida, and located in Brevard County, Florida, hereinafter called the City, with an address of 65 Stone Street, Cocoa, Florida 32922.

Witnessed that the Contractor and the City, for the Consideration herein-after named, agree as follows:

Scope of Work – Article I

The Contractor shall furnish all labor, supervision, equipment, materials and perform all work described in the Bidding/Contract Documents and Drawings, and shall do everything required by this agreement and the contract documents. A detailed Project Schedule is provided in Appendix B and Specifications Package is provided in Appendix C as the base point of reference for this project requirement.

Commencement and Completion of Work - Article II

The Contractor will be required to commence work under this contract within 10 calendar days after the date of receipt by him of Notice to Proceed or Purchase Order, and substantially complete the work within 135 days and totally complete all work in its entirety within 155 days of Notice to Proceed or Purchase Order.

The City anticipates issuing the Notice to Proceed by January 6, 2020. The work must be substantially complete by June 1, 2020 and totally complete in its entirety by June 20, 2020. The City holds a major event in the park on July 4th weekend and all work shall be complete and the area cleaned to allow preparation for that event.

The Contractor agrees to reimburse the City of Cocoa, Florida, as liquidated damages for each calendar day elapsing between the date herein specified as the day of substantial or full completion and the actual day of such completion of the contract work, the amount of one thousand dollars (\$1,000.00) per calendar day. All provisions regarding Contract Time are essential to the performance of this Contract. The parties acknowledge that the Contract Time provided in this Section includes consideration of adverse weather conditions common to Central Florida including the possibility of hurricanes and tropical storms.

The Contract Sum - Article III

The City will pay the Contractor for performance of the contract, subject to additions and deductions provided therein, in current funds as follows:

NINE HUNDRED FIFTY TWO THOUSAND NINE HUNDRED NINE DOLLARS AND ZERO CENTS \$ 952,909.00
(Written in Words) (In Figures)

Contractor agrees to accept the Contract Price as full compensation for performing all Work, furnishing all Materials, and performing all Work embraced in the Contract Documents.

The Contractor acknowledges that Contractor studied, considered, and included in Contractor's Total Bid all costs of any nature relating to: (1) performance of the Work under Florida weather conditions; (2) applicable law, licensing, and permitting requirements; (3) the Project site conditions, including but not limited to, subsurface site conditions; (4) the terms and conditions of the Contract Documents, including, but not limited to, the indemnification and no damage for delay provisions of the Contract Documents.

The Contractor acknowledges that performance of the Work will involve significant Work adjacent to, above, and in close proximity to Underground Facilities including utilities which will require the support of active utilities, as well as, the scheduling and sequencing of utility installations, and relocations (temporary and permanent) by Contractor.

(1) In addition to the acknowledgments previously made, the Contractor acknowledges that the Contractor's Total Bid (original Contract Price) specifically considered and relied upon Contractor's own study of Underground Facilities, utilities in their present, relocated (temporary and permanent) and proposed locations, and conflicts relating to utilities and Underground Facilities.

(2) The Contractor acknowledges that Contractor's Total Bid (original Contract Price) considered and included all of Contractor's costs relating to Contractor's responsibilities to coordinate and sequence the Work of the Contractor with the work of the City, if any, with its own forces, the work of other contractors, if any, and the work of others at the Project site.

Payments will be made to the Contractor for actual quantities installed on the basis of the Schedule of Unit Prices included as a part of the Bid, which shall be as fully a part of the Contract as if attached or repeated herein. Where the Contract Documents provide for Unit Price Work, the Contract Price stated in the Agreement will include for all Unit Price Work an amount equal to the sum of the Unit Prices for each item of Unit Price Work times the estimated quantity of each item as indicated in the Contract Documents. Each Unit Price will be deemed to include an amount considered by Contractor to be adequate to cover all costs, including supplemental and administrative costs, and profit.

Progress Payments – Article VI

Partial payments calculated from materials stored on the job site and completed work in place and acceptable to the City at the unit bid prices will be made in accordance with the Florida

Prompt Pay Act, Chapter 218, Part VII, Florida Statutes. The Contractor shall, after the first of each month, submit invoice for materials used and work performed for the previous month. The owner will certify all invoices before presenting them for payment. A form of pay estimate, stating that the bill is fair and equitable and in exact accord with contract prices will be utilized for pay purposes. Ten percent (10%) of the amount due and payable to the Contractor will be retained from each month's partial payment.

The remaining retainage amount withheld shall be released with the Final Payment after the issuance of the Final Completion Certificate. City shall make final payment to Contractor within thirty (30) days after the work is fully and properly completed, if the contract has been fully and timely performed, but subject to the condition that final payment shall not be due until Contractor has delivered to City a complete release of liens arising out the contract, or receipt releases of lien fully covering all labor, materials and equipment for which a lien could be filed as provided in Article VIII below.

Also, the contractor shall: (1) provide satisfactory evidence that it has acquired title to the materials that it has been paid for and that the material will be used to perform this contract, and (2) provide a Consent of Surety for the progress payments.

Progress payments may be withheld if:

- a. Work is found defective and not remedied;
- b. Contractor does not make prompt and proper payments to subcontractors;
- c. Contractor does not make prompts and proper payments for labor, materials, or equipment furnished him;
- d. Another contractor is damaged by an act for which Contractor is responsible;
- e. Claims or liens are filed on the job; or
- f. In the opinion of the City that Contractor's work is not progressing satisfactorily.

Further, City may withhold additional retainage in anticipation of liquidated damages equal to the product of the number of Days after the scheduled Contract Time (Substantial Completion or Final Completion) and the amount of liquidated damages set forth in this Contract if Contractor is behind schedule and it is anticipated by City that the Work will not be completed within the Contract Time. The additional retainage, under this subsection, may at the City's discretion be withheld from subsequent Progress Payments. Any additional retainage held under this subsection shall be released to Contractor in the next Progress Payment following the City's approval of a supplemental Progress Schedule demonstrating that the requisite progress will be regained and maintained as required by the General Conditions.

By making payments City does not waive claims including but not limited to those relating to:

- a. Faulty work appearing after substantial completion has been granted;
- b. Work that does not comply with the Contract Documents;
- c. Outstanding claims of liens; or
- d. Failure of Contractor to comply with any special guarantees required by the Contract Documents.

The Contract Documents – Article V

The Notice to Contractors, Instructions to Bidders, General Conditions, Special Conditions, Specifications, Proposal, Agreement, Performance/Payment Bond, and Drawings form the contract and they are as fully as part of this contract as if the same were hereto attached or herein repeated. In case of any inconsistency in any of the documents bearing on the Agreement between the City and the Contractor, the inconsistency shall be resolved by giving precedence in the following order:

- a. Agreement Exhibits and Addenda
- b. Change Orders
- c. Supplemental Terms and Conditions
- d. General Terms and Conditions
- e. Engineering Plans and Drawings
- f. Contractor's Bid Submittal
- g. [OTHER]

At its discretion, during the course of the work, should any errors, ambiguities, or discrepancies be found in the Contract Documents, the City at its sole discretion will interpret the intent of the Contract Documents and the Contractor hereby agrees to abide by the City's interpretation and agrees to carry out the work in accordance with the decision of the City.

Liability Insurance – Article VI

COMMERCIAL GENERAL LIABILITY INSURANCE MINIMUM REQUIREMENTS FOR CONTRACTS VALUED AT LESS THAN \$15,000:

It is required that individuals and firms contracting with the City of Cocoa, where the total contract or job value is LESS than \$15,000, maintain Commercial General Liability insurance

with a minimum per occurrence limit of not less than \$200,000 per person and \$300,000 each occurrence, and property damage insurance of at least \$200,000 each occurrence and with a deductible amount not greater than \$1,000. It is further required that the City of Cocoa, be named as an additional insured to the contractor's CGL policy, and that proof of same in the form of a certificate of insurance be submitted before work is begun.

COMMERCIAL GENERAL LIABILITY INSURANCE MINIMUM REQUIREMENTS FOR CONTRACTS VALUED AT \$15,000 OR MORE:

It is required that individuals and firms contracting with the City of Cocoa, where the total contract or job value is \$15,000 or MORE, maintain Commercial General Liability insurance with a minimum per occurrence limit of not less than \$2,000,000 as the combined single limit for each occurrence and with a deductible not greater than \$5,000 or as otherwise approved in writing by the City Manager. It is further required that the City of Cocoa and FDOT, be named as an additional insured to the Contractor's CGL policy, and that proof of same in the form of a certificate of insurance be submitted before work is begun.

AUTOMOBILE LIABILITY INSURANCE MINIMUM REQUIREMENTS FOR ALL CONTRACTS:

The Contractor shall maintain comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit bodily injury and minimum \$1,000,000 property damage as the combined single limit for each occurrence to protect the Contractor from claims for damages for bodily injury, including wrongful death, as well as from claims from property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Contractor or by anyone directly or indirectly employed by the Contractor.

PROFESSIONAL LIABILITY INSURANCE MINIMUM REQUIREMENTS FOR ALL PROFESSIONALS AS DEFINED BY FLORIDA STATUTE:

Professionals and professional corporations, associations, and firms who contract with the City of Cocoa to provide professional services are required to maintain Professional Liability Insurance and submit proof of same in the form of a certificate of insurance before work is begun.

ENVIRONMENTAL IMPAIRMENT INSURANCE MINIMUM REQUIREMENTS:

Individuals or firms who contract with the City of Cocoa to provide excavation or construction type services and who will be locating portable fuel or lubricant storage tanks at the job site or who will be storing or using hazardous chemicals on the job site are required to maintain Environmental Impairment Insurance of "Pollution Insurance" with a limit of not less than \$1,000,000 per occurrence and submit proof of same in the form of a certificate of insurance or an endorsement to their General Liability policy showing a pollution exclusion exception for each specific work product or storage container before work is begun. Contracts with such firms shall include a provision that they work in compliance with the OSHA Hazardous

Communication Standard and Florida Department of Environmental Protection guidelines and supply all information about hazardous chemical being brought onto City property as required by the City's Safety and Loss Control Program.

WORKERS' COMPENSATION INSURANCE MINIMUM REQUIREMENTS:

It is required that firms employing four or more people who contract with the City of Cocoa maintain Workers' Compensation Insurance at the statutory limits and employer liability insurance and submit proof of same in the form of a certificate of insurance before work is begun.

It is required that firms employing less than four people who contract with the City of Cocoa comply with the exemption and notice provisions of F.S. 440 and maintain employer liability insurance and submit proof of same in the form of a certificate of insurance before work is begun.

However, if you are a corporate officer of a corporation that is actively engaged in the construction industry, or a sole proprietor or partner who is actively engaged in the construction industry, then your exemption will not apply to any work performed at a commercial building project valued at \$250,000 or greater and you must secure workers' compensation coverage in accordance with F.S. 440.38 and these general conditions and submit proof of same in the form of a certificate of insurance before work is begun.

COMPREHENSIVE BUILDER RISK INSURANCE

The Contractor shall maintain comprehensive builder risk insurance, which shall cover Contractor's labor, and any materials and equipment to be used for completion of the Work performed under this Agreement, against all risks of direct physical loss, excluding earthquake and flood, for a minimum amount of \$2,000,000. Contractor shall maintain the builder risk insurance required by this subsection until the date a certificate of occupancy is issued issuance of a certificate of occupancy for the Work.

DURATION OF CONTRACTS-NAMED INSUREDS-LIABILITY INSURANCE:

For contracts exceeding time periods of 30 days, it is required that the vendor name the City of Cocoa as an additional insured on their Liability Insurance policies and submit proof of same in the form of a certificate of insurance before work is begun. A copy of a current Certificate of Insurance shall be provided to the City by Contractor upon the Effective Date of this Agreement which satisfied the insurance requirements of this Article. Renewal certificates shall be sent to the City 30 days prior to any expiration date. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the City and the State of Florida, Department of Transportation, or as provided in accordance with Florida law.

Performance / Payment Bond – Article VII

The contractor shall furnish to the City concurrently with the execution of this contract a Performance/Payment Bond equal to 100% of the bid in the penal sum of \$ 952,909.00 with good and sufficient sureties, conditioned upon the performance of this contract by the Contractor in accordance with the terms and conditions hereof, within the time herein provided and with the additional obligation that such Contractor shall promptly make payment to all persons supplying him, labor, materials, and supplies, used directly by said Contractor in the prosecution of the work provided for in this contract.

Acceptance and Final Payment – Article VIII

Upon receipt of written notice that the work is ready for final inspection and acceptance, the Owner will promptly make such inspection and when he finds the work acceptable under the contract and the contract fully performed, he will promptly issue a final certificate, over his own signature, stating the work provided for in this contract has been completed and acceptance by him under the terms and conditions thereof is recommended and the entire balance found to be due the Contractor will be paid to the Contractor at the office of the City within thirty (30) days after the date of said final certificate. Before issuance of final certificate, the Contractor shall submit evidence satisfactory to the Owner that all payrolls, material bills and other indebtedness connected with the work have been paid. The making and acceptance of the final payment shall not constitute a waiver of any claims of the city against the Contractor, including, but not limited to, claims arising for defective or faulty work, warranty work, unsettled liens, or the failure of the Contractor to correctly comply with the job specification. A Consent of Surety for the release of the final payment will be required.

Attorney Fees and Costs – Article IX

Should any dispute or legal action arise out of this agreement or the obligations stated herein, or any dispute or action is based upon this Agreement or any of its provisions, the prevailing party shall be entitled to recover its reasonable attorney fees, expenses and costs incurred in connection with such a dispute or action, including, without limitation, its attorney fees and costs through appeals.

Fully Negotiated Agreement – Article X

This agreement has been fully negotiated in an arm's length transactions and neither party has been coerced in any manner to execute this agreement. Each party has opportunity to employ legal counsel and seek legal advice from such counsel with respect to this agreement, its obligations, terms and limitations.

Severability – Article XI

If any provisions of this agreement is declared or deemed invalid, unenforceable or unlawful by any tribunal or court of competent jurisdiction, such provision shall be deemed automatically modified to conform to the requirements for validity as declared at the time, and as so modified,

shall be deemed a provision of this agreement as though originally included herein. In the event that the provision invalidated is of such nature that it cannot be so modified, the provision shall be deemed deleted and withdrawn from this agreement as though the provision had never been included herein. In either event, the remaining provisions of this agreement shall remain in full force and effect.

Venue and Governing Law – Article XII

The parties agree that the venue shall be exclusively in Brevard County, State of Florida, for disputes or actions which may arise out of or are based upon this agreement. Venue for any federal action or litigation shall be Orlando, Florida. This agreement shall be governed by the laws of the State of Florida where it is deemed, made and executed.

Modification and Entire Agreement – Article XIII

This agreement may only be modified, altered or amended in whole or in part, by written instrument setting forth such changes and signed by all parties hereto. This agreement constitutes the entire agreement and understanding between the parties, and oral communications and understandings are hereby deemed void and merged into this agreement.

Notices – Article XIV

Unless otherwise stated herein, all notices to the parties to this agreement shall be in writing, certified mail, return receipt request, at the address listed above.

Binding Effect – Article XV

This agreement shall be binding upon the parties, heirs, assigns, personal representatives, executors and successors.

Waiver – Article XVI

Any waiver of any breach or violation of either party's obligations under this agreement shall not be construed as a continuing waiver or consent to any subsequent breach or violations.

Independent Contractor – Article XVII

At all times during the term of this Agreement, Contractor shall be considered an independent contractor and not an employee of the City.

Change Orders – Article XVIII

Any and all change orders required under this Agreement shall be approved, in writing, by the City prior to the Contractor performing, or not performing, the work specified in the change order.

Sovereign Immunity – Article XVIX

The City intends to avail itself of the benefits of Section 768.28, Florida Statutes and any other statutes and common law governing sovereign immunity to the fullest extent possible. Neither this provision nor any other provision of this Agreement shall be construed as a waiver of the City's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law. Contractor agrees that City shall not be liable under this Agreement for punitive damages or interest for the period before judgment.

Further, City shall not be liable for any claim or judgment, or portion thereof, to any one person for over two hundred thousand dollars (\$200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds three hundred thousand dollars (\$300,000.00). Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. This paragraph shall survive termination of this Agreement.

Default by Contractor – Article XX

Right to Revoke / Terminate

The City reserves the right to revoke and terminate this Agreement and rescind all rights and privileges associated with this Agreement, without penalty, in the following circumstances, each of which shall represent a default and breach of this Agreement:

- a. Contractor defaults in the performance of any material covenant or condition of this Agreement and does not cure such other default within seven (7) calendar days after written notice from the City specifying the default complained of, unless, however, the nature of the default is such that it cannot, in the exercise of reasonable diligence, be remedied within seven (7) calendar days, in which case the Contractor promptly takes and diligently pursues such action as are necessary therefore; or
- b. Contractor is adjudicated bankrupt or makes any assignment for the benefit of creditors; or Contractor becomes insolvent, or is unable or unwilling to pay its debts; or
- c. Contractor has acted negligently, as defined by general and applicable law, in performing the services hereunder; or
- d. Contractor has committed any act of fraud upon the City; or
- e. Contractor has made a material misrepresentation of fact to the City while performing its obligations under this Agreement.

Notwithstanding the aforementioned, in the event of a default by Contractor, the City shall have the right to exercise any other remedy the City may have by operation law, without limitation, and without any further demand or notice.

Termination – Article XXI

Notwithstanding any other provision of this Agreement, City may, upon written notice to Contractor, terminate this Agreement, without penalty, if:

- a. Contractor is in default pursuant to Article 20, Default by Contractor;
- b. Contractor makes a general assignment for the benefit of its creditors;
- c. Contractor fails to comply with any condition or provision of this Agreement; or
- d. Contractor is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Agreement without prejudice to any other right or remedy City may have under this Agreement.

In the event of such termination, City shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this Agreement, for work properly performed prior to the effective date of termination. This Agreement may be cancelled by either party with thirty (30) days written notice to the other party.

Indemnification – Article XXII

To the extent provided by law, Contractor shall indemnify, defend, and hold harmless the City and the State of Florida, Department of Transportation, including the City and Department's officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of Contractor, or any of its officers, agents, or employees, subcontractors, or independent contractors, acting within the scope of their office or employment, in connection with the rights granted to or exercised by Contractor hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes.

The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Nor shall the same be construed to constitute agreement by Contractor to indemnify City for the negligent acts or omissions of City, its officers, agents, or employees, or third parties. Nor shall the same be construed to constitute agreement by Contractor to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or third parties.

The indemnification provided above shall obligate the Contractor to defend as its own expense or to provide for such defense, at the option of the City, as the case may be, of any and all claims of liability and all suits and actions of every name and description that may be brought against the City or its employees and officers to the services under this Agreement whether the services be performed by the Contractor or anyone directly or indirectly employed by them. In all events the

City shall be permitted to choose legal counsel of its sole choice, the fees for which shall be reasonable and subject to and included this indemnification provided herein.

The Contractor specifically assumes potential liability for actions brought by the Contractor's own employees against the City and, solely for the purpose of this indemnification and defense, the Contractor specifically waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. This waiver has been specifically and mutually negotiated by the parties.

This indemnification shall survive the termination of this Agreement.

Corporate Representations by Contractor – Article XXIII

Contractor hereby represents and warrants to the City the following:

- a. Contractor is duly registered to do business in the State of Florida and is in good standing under the laws of Florida, and is duly qualified and authorized to carry on the functions and operations set forth in the Agreement.
- b. The undersigned representative of Contractor has the power, authority, and legal right to execute and deliver this Agreement on behalf of Contractor.

No Joint Venture – Article XXIV

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

Third Party Right – Article XXV

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Contractor.

Assignment – Article XXVI

- a. Contractor shall not assign or subcontract this Agreement, any task authorization hereunder, or any rights or any Moines due or to become due hereunder without the prior, written consent of City.
- b. If upon receiving written approval from city, any part of this Agreement is subcontracted by Contractor, Contractor shall be fully responsible to City for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.
- c. If City determines that any subcontractor is not performing in accordance with this Agreement, City shall so notify Contractor who shall take immediate steps to remedy the situation.

d. If any part of this Agreement is subcontracted by Contractor, prior to the commencement of any work by the subcontractor, Contractor shall require the subcontractor to provide city and its affiliates with insurance coverage as set forth by the City.

Designation of Project Manager - Article XXVII

The duties and authority of the City are as follows:

a. **General Administration of Contract**. The primary function of the City is to provide the general administration of the contract. In performance of these duties and responsibilities, the authorized representative is the designated City Project Manager during the entire period of construction. The City may change the Project Manager during the term of this contract.

b. **Inspections, Opinions, and Progress Reports**. The City shall be kept familiar with the progress and quality of the work by Contractor and may make periodic visits to the work site. The City will not be responsible for the means of construction, or for the sequences, methods, and procedures used therein, or for the Contractor's failure to perform the work in accordance with the Contract Documents.

c. **Access to Worksite for Inspections**. The City shall be given free access to the worksite at all times during work preparation and progress. The Project Manager is not obligated to make exhaustive or continuous onsite inspections to perform his duties of checking and reporting on work progress, and any such inspections shall not waive Owner's claim regarding defective work by Contractor.

d. **Interpretation of Contract Documents: Decisions on Disputes**. The City will be the initial interpreter of the contract document requirements, and make decisions on claims and disputes between Contractor and City.

e. **Rejection and Stoppage of Work**. The City shall have authority to reject work which in its opinion does not conform to the Contract Documents, and in this connection may stop the work or a portion thereof, when necessary.

f. **Payment Certificates**. The City will determine the amounts owing to Contractor as the work progresses, based on Contractor's applications and City's inspections and observations, and will issue certificates for progress payments and final payments in accordance with the terms of the Contract Documents.

Progress Meeting – Article XXVIII

City's Project Manager may hold periodic progress meetings on a monthly basis, or more frequently if required by the City, during the term of work entered into under this Agreement. Contractor's Project Manager and all other appropriate personnel shall attend such meetings as designated by the City's Project Manager.

Responsibilities of Contractor – Article XXIX

Contractor's duties and rights in connection with the project herein are as follows:

- a. **Responsibility for Supervision and Construction.** Contractor shall be solely responsible for all construction under this contract, including the techniques, sequences, procedures and means, for the coordination of all work. Contractor shall supervise and direct the work, and give it all attention necessary for such proper supervision and direction.
- b. **Discipline and Employment.** Contractor shall maintain at all times strict discipline among his employees, and he agrees not to employ for work on the project any person unfit or without sufficient skill to perform the job for which he was employed.
- c. **Furnishing of Labor, Materials, etc.** Contractor shall provide and pay for all labor, materials and equipment, including tools, construction equipment and machinery, utilities, including water, transportation, and all other facilities and work necessary for the proper completion of work on the project in accordance with the Contract Documents.
- d. **Payment of Taxes: Procurement of Licenses and Permits.** Contractor shall secure all licenses and permits necessary for proper completion of the work, paying the fees thereof. Contractor warrants that it (and subcontractors or tradesmen, if authorized in the Contract Documents) hold or will secure all trade or professional licenses required by law for Contractor to undertake the contract work.
- e. **Guarantee.** The Contractor hereby guarantees the Work to the full extent provided in the Plans, Specifications, General Conditions, Special Conditions and other Contract Documents. The Contractor shall remove, replace and/or repair at its own expense and at the convenience of the City any faulty, defective or improper Work, materials or equipment discovered within one (1) year from the date of the acceptance of the project as a whole by the Owner or for such longer period as may be provided in the Plans, Specifications, General Conditions, Special Conditions or other Contract Documents.

Without limiting the generality of the foregoing, the Contractor warrants to the City, that all materials and equipment furnished under this Agreement will be of first-class quality and new, unless otherwise required or permitted by the other Contract Documents, that the Work performed pursuant to this Agreement will be free from defects and that the Work will strictly conform with the requirements of the Contract Documents. Work not conforming to such requirements, including substitutions not properly approved and authorized, shall be considered defective.

All warranties contained in this Agreement and in the Contract, Documents shall be in addition to and not in limitation of all other warranties or remedies required and/or arising pursuant to applicable law. Furthermore, Contractor will provide written guarantee for work and materials for one (1) calendar year after acceptance by City. The one (1) period is not a limitation upon manufacturer warranties or Contractor's payment and performance Bond(s).

Prohibition Against Contingent Fees – Article XXX

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, 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 Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

Public Records – Article XXXI

Pursuant to Chapter 119, Florida Statutes, Contractor agrees that any records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics, or means of transmission, of Contractor related, directly or indirectly, to the services provided to the City under this Agreement and made or received pursuant to law or ordinance or in connection with the transaction of official business by the City, may be deemed to be a public record, whether in the possession or control of the City or the Contractor.

Said records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics, or means of transmission of Contractor are subject to the provisions of Chapter 119, Florida Statutes, and may not be destroyed without the specific written approval of the City's designated custodian of public records.

Upon request by the City, the Contractor shall promptly supply copies of said Public Records to the City. All books, cards, registers, receipts, documents, and other papers in connection with this Agreement shall at any and all reasonable times during normal business hours of the Contractor be open and freely exhibited to the City for the purpose of examination and/or audit. Failure by Contractor to grant such access and comply with public records laws and/or requests shall be grounds for immediate unilateral cancellation of this Agreement by the City upon delivery of a written notice of cancellation.

If the Contractor fails to comply with this Section, and the City must enforce this Section, or the City suffers a third-party award of attorney's fees and/or damages for violating Chapter 119, Florida Statutes, due to Contractor's failure to comply with this Section, the City shall collect from Contractor prevailing party attorney's fees and costs, and any damages incurred by the City, for enforcing this Section against Contractor. And, if applicable, the City shall also be entitled to reimbursement of all attorneys' fees and damages which the City had to pay a third party because of the Contractor's failure to comply with this Section. The terms and conditions set forth in this Section shall survive the termination of this Agreement.

Force Majeure – Article XXXII

Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; flood; windstorm; explosion; riot; war; sabotage; strikes (except involving Contractor's labor force); extraordinary breakdown of or damage to City's affiliates' generating plants, their equipment, or facilities; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the reasonable control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes. If any circumstance of Force Majeure remains in effect for sixty days, either party may terminate this Agreement.

(NOT APPLICABLE) FDOT Conflict of Interest Provisions – Article XXXIII

The Contractor agrees as follows and agrees to include in each subcontract and shall require all subcontractors to include in each second tier subcontract the following:

- a. The Contractor will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, the regulation of the U.S. Department of Transportation issued thereunder, and the assurance by the Recipient pursuant thereto. The Recipient shall include the FDOT-required attachment, Title VI Assurances, in all contracts with consultants and contractors performing work on the Project that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations.
- b. The Contractor will comply with all requirements as imposed by the ADA, the regulations of the Federal Government issued thereunder, and assurance by the City pursuant thereto.
- c. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for construction or repair of a public building or public work; may not submit bids or leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- d. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids or leases of real property to a public entity; may not be awarded or perform work as a contractor,

supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.

- e. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied, or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the City.
- f. The Contractor shall not enter into any contract, subcontract, or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer, or employee of the City, the Contractor, or its subcontractor or the locality during tenure or for 2 years thereafter has any interest, direct or indirect.

Inspector General - Article XXXIV

The Parties agree to comply with s. 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s. 20.055(5), Florida Statutes, which provides: "It is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section."

Federally Required Contract Clauses – Article XXXV

A. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. Compliance with the Contract Work Hours and Safety Standards Act

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

C. *Clean Air Act*

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, Federal awarding agency and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

D. *Federal Water Pollution Control Act*

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

E. *Suspension and Debarment*

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.

(3) This certification is a material representation of fact relied upon by the City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida and , the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

F. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

G. Procurement of Recovered Materials

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

H. Access to Records

The following access to records requirements applies to this contract:

(1) The contractor agrees to provide the City, the State of Florida, the federal funding agency, the Comptroller General of the United States, or any of their authorized representatives access to any

books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the State of Florida, the federal funding agency, or its authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

I. Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that federal financial assistance will be used to fund the contract only. The Contractor will comply with all applicable federal law, regulations, executive orders, procedures, and directives.

J. No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

K. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

L. Compliance with the Davis-Bacon Act

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.
- d. The Contractor agrees to include these Davis-Bacon Act requirements in each subcontract.

M. Copeland "Anti-Kickback" Act

- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the City or any federal funding or state funding agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

CONTRACTOR

Signed and sealed by the Contractor in the presence of:

BY: *John J. Nash* President
(Contractor)

ATTEST: *John J. Nash* JASON A. RADKE

CITY OF COCOA

Signed and sealed by the City in the presence of:

BY _____
(City Manager)

ATTEST _____