

CONSTRUCTION RIDER
HISTORIC HARRY T. MOORE CENTER RESTORATION PROJECT
WINDOWS AND DOORS
[PBG-HTM-FL-R6-GC08-111821-OCC]

THIS CONSTRUCTION RIDER AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2024, between the **CITY OF COCOA**, a Florida municipal corporation (“City” or “Owner”) and **OVATION CONSTRUCTION INC.**, authorized to transact business in the State of Florida, with principal offices located at 361 S. Central Avenue, Oviedo, FL 32765, (“Contractor”). The City and the Contractor agree as follows:

1. The Purchasing Policies of the City of Cocoa allow for “piggybacking”. Pursuant to this procedure, the City is allowed to piggyback an existing government contract, and there is no need to obtain formal or informal quotations, proposals or bids. The parties agree that the Contractor has entered into a contract with Sourcewell, a public agency in the state of Minnesota, and said contract being identified as: **FL-R6-GC08-111821-OCC** (said original contract being referred to as the “**Original Government Contract**”).

2. The Original Government Contract, including all associated Addenda, Appendices, Exhibits and Attachments, including Contractor’s Bid Submittal, as included in the Original Government Contract, is incorporated herein by reference and is attached as **Exhibit “1”** to this Agreement. All of the terms and conditions set forth in the Original Government Contract (Exhibit “1”) are fully binding on the parties and said terms and conditions are incorporated herein except to the extent expressly modified herein.

3. Notwithstanding the requirements that the Original Government Contract is fully binding on the parties, the parties have agreed to modify certain provisions of the Original Government Contract as applied to this Agreement between the Contractor and the City of Cocoa, as follows:

A) ~~Notwithstanding anything in Exhibit “1” to the contrary, the following terms shall be substituted throughout the Original Government Contract: _____ = City of Cocoa; _____ Code = Code of the City of Cocoa. Further, references to specifically identified _____ Codes, policies and procedures shall refer to similar and substantively equivalent Cocoa Codes, policies and procedures, if any. NOT USED~~

B) **Scope of Services.** Pursuant to Section 1 of the Original Government Contract, the City and Contractor agree that the scope of services to be performed by Contractor under this Agreement is identified in **Exhibit 2** (Quote/WOP 125390), and Exhibit 2 shall constitute a Work Order or Task Order. Further Contract Documents consist of **Exhibit 3** 231109 CDs for Bid 231109 and **Exhibit 4** Historical Resources Grant 23.h.sc.100.023, which are hereby incorporated into this Contract by this reference.

C) **Order of Precedence.** Notwithstanding anything in the Original Government Contract to the contrary, in case of any inconsistency in any of the documents bearing on the Agreement between the OWNER and the CONTRACTOR, the inconsistency shall be resolved by giving precedence in the following order:

- i. Change Orders
- ii. Construction Rider
- iii. Original Government Contract # FL-R6-GC08-111821-OCC, Exhibits and Addenda
- iv. Supplemental Terms and Conditions
- v. General Terms and Conditions
- vi. Engineering Plans and Drawings, if any
- vii. IFB # 111821 for IDIQ General Construction issued by Sourcewell, dated November 18, 2021, including any subsequently issued Addenda
- viii. Contractor's Bid Submittal
- ix. Punchlist
- x. 2021 Technical Specifications

D) **Contract Time.** Notwithstanding anything in Exhibit "1" to the contrary, the term of this Agreement with the City of Cocoa shall take effect on the date of its execution by the City and Contractor and continue until the Project has been completed and accepted by the City. The Contract Time shall begin to run upon the OWNER's issuance of the Notice to Proceed. The CONTRACTOR shall sign the Notice to Proceed and deliver it to the Owner's Project Manager.

- i. *Substantial Completion.* The Work shall be substantially completed within **Fifty-Six (56)** calendar days after the date when the Contract Time begins to run but will be no later than December 1, 2024.

The date of Substantial Completion of the Work is the date certified in writing by the OWNER when (1) construction is sufficiently complete, in accordance with the contract documents, so the OWNER can occupy or utilize the work for its intended purpose, as expressed by the contract documents, and (2) any additional project-specific requirements or milestones for "Substantial Completion" identified in the general, special, or technical conditions or construction plans have been satisfied.

- ii. *Punchlist Creation and Acceptance.* No more than ten (10) calendar days following Substantial Completion, the CONTRACTOR shall provide to OWNER a draft Punchlist detailing the remaining items and estimated cost of each required to render the Work complete, satisfactory, and acceptable. OWNER shall review the draft Punchlist and

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provide any comments to the CONTRACTOR. The OWNER and CONTRACTOR shall cooperate in the development of the Punchlist regarding both the items to be included and the estimated cost of each. The OWNER shall approve a final Punchlist within 30 calendar days of Substantial Completion for projects costing less than or equal to \$10 million or 45 calendar days of Substantial Completion for projects costing over \$10 million.

OWNER shall deliver a final approved Punchlist to CONTRACTOR no more than 5 calendar days following final approval of the Punchlist.

If the CONTRACTOR fails to coordinate with the OWNER to create a Punchlist and the OWNER has given the CONTRACTOR written notice of the failure, then the OWNER may withhold 150 percent of the estimated costs required to complete the items the OWNER intended to include on the Punchlist, without input from the CONTRACTOR, and shall deliver the Punchlist within the time period in this subsection. The failure to include any corrective work or pending items not yet completed on the Punchlist does not alter the responsibility of the CONTRACTOR to complete all the Work purchased under this Agreement.

- iii. *Final Completion.* The Work shall be finally completed, ready for Final Payment within thirty (30) calendar days after the date of delivery of the final, approved Punchlist, which shall be at least thirty (30) calendar days following the delivery of the final approved Punchlist.
- iv. *Adverse Weather Conditions.* The parties acknowledge that the Contract Time provided in this subsection includes consideration of adverse weather conditions common to Central Florida including the possibility of hurricanes and tropical storms.

E) **Liquidated Damages.** OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in Subsection D) above, plus any extensions thereof allowed in accordance with this Agreement. OWNER and CONTRACTOR also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER \$500 for each calendar day that expires after the time specified in Subsection D) for substantial completion until the work is substantially complete and \$250 for each calendar day that expires after the time specified in Subsection D) for final completion until the work is finally complete. The liquidated damages provided in this Section are intended to apply even if CONTRACTOR is terminated, in default, or if the CONTRACTOR has abandoned the Work. This provision binds Contractor's performance bond surety.

F) **Contract Price.** The OWNER will pay the CONTRACTOR in current funds for the performance of the work in accordance with the Contract Documents, subject to additions and deductions approved by Change Order, the Total Contract Price of **Two Hundred Seventy Seven Thousand, Two Hundred Fifty-Nine Dollars and Sixty-Three Cents (\$277,259.63)**, which is consistent with the Original Government Contract and as provided in the Quote attached hereto as **Exhibit 2**. 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.

Payments will be made to the CONTRACTOR for actual quantities installed on the basis of the Schedule of Unit Prices included in the Original Government Contract. 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.

Notwithstanding anything in Exhibit "1" to the contrary, invoices shall be submitted, referencing this Agreement and any Purchase Order to:

City of Cocoa
Finance Department
65 Stone Street
Cocoa, FL 32922

By email to accountspayable@cocoaf1.org.

G) **Indemnification.** Notwithstanding anything in Exhibit "1" to the contrary, the Contractor shall indemnify, defend, and hold harmless the City, its City Commission members, employees, representatives, and attorneys from and against all claims, suits, actions, damages, losses, expenses, and/or causes of action including, but not limited to, economic loss, reasonable attorneys' fees, and expenses, arising out of, or in connection with this Agreement, provided that any such claims, suits, action, damages, losses, expenses, and or causes of action (1) is attributable to any person(s) claiming personal injury, bodily injury, sickness, disease, or death; or damage to tangible property, including loss or use; and (2) is caused or incurred in whole or in part by Contractor or any of its subcontractors, agents, or anyone directly or indirectly employed by Contractor, subcontractor, agents, regardless if caused in part by the City. This indemnification shall not apply to any claims, suits, actions, damages, losses, expenses, and/or

a cause of action, arising from the City's sole gross negligence or intentional misconduct. For purposes of Contractor's indemnification obligation only, Contractor shall indemnify the City for claims made by the employees of Contractor against the City, and Contractor hereby 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 paragraph shall survive the termination of this Agreement.

H) **Force Majeure.** Notwithstanding anything in Exhibit "1" to the contrary, 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 OWNER 's affiliates' generating plants, their equipment, or facilities; court injunction or order; federal and/or state law or regulation; or order by any regulatory agency; ; 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.

I) **Progress Payments.** Notwithstanding anything in Exhibit "1" to the contrary, no payments shall be made where a Payment and Performance Bond is required herein until OWNER receives a certified copy of the recorded Bond. OWNER shall make progress payments on account of the contract price to CONTRACTOR, on the basis of application for payments submitted to the OWNER or OWNER's Project Manager, by CONTRACTOR as the work progresses, and in accordance with the Contract Documents. By submitting each request for a progress payment, the CONTRACTOR certifies, to the best of its knowledge and belief, that: (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract; (2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment requested, in accordance with subcontract agreements; (3) The request is made in good faith and is a true and accurate accounting of the work performed and materials supplied; and (4) The representative signing the request for a progress payment is authorized to certify the request on behalf of the CONTRACTOR. Progress payments may be submitted no more frequently than monthly or, alternatively, in accordance with the following schedule:

In addition to any other reason provided in Exhibit "1", Progress payments may be withheld if:

- i. Work is found defective and not remedied;
- ii. CONTRACTOR does not provide consent of surety with each payment application;
- iii. Another contractor is damaged by an act for which CONTRACTOR is responsible; or
- iv. In the opinion of the OWNER that CONTRACTOR's work is not progressing satisfactorily.

OWNER herein () designates or () does not designate an agent, i.e., an architect or engineer, that must approve any payment request or invoice before the payment request or invoice is submitted to OWNER for payment. If an agent must approve the payment request or invoice before the payment request or invoice is submitted to OWNER, payment is due 25 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1), Florida Statutes, except to

the extent that the payment request or invoice does not meet contract requirements. The CONTRACTOR may send OWNER an overdue notice. If the payment request or invoice is not rejected within 4 business days after delivery of the overdue notice, the payment request or invoice shall be deemed accepted, except for any portion of the payment request or invoice that is fraudulent or misleading. If an agent need not approve the payment request or invoice submitted by CONTRACTOR, payment is due 20 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1), Florida Statutes, except to the extent that the payment request or invoice does not meet contract requirements. If OWNER disputes a portion of a payment request or an invoice, the undisputed portion shall be timely paid. OWNER shall reject payment requests or invoices in accordance with the procedure established in s. 218.735, Florida Statutes.

If the OWNER designated an agent to approve any payment requests before submitted to the OWNER for payment above, the OWNER further hereby identifies **Architects RZK Inc., 600 Florida Avenue Suite 201 Cocoa, FL 32922** Attn: **John C. Zwick**, using email **john.zwick@architectsrzk.com**, as the agent that must approve payment requests prior to their submission to OWNER.

J) **Change Orders.** Notwithstanding anything in Exhibit "1" to the contrary, the OWNER, by written change order and without invalidating the Agreement, may order, or at the request of Contractor approve, extra Work or make changes by altering, adding to, or deducting from the Work, the contract sum being adjusted accordingly. Additional time required for any change in Work must be included with the requested Change Order. The CONTRACTOR'S exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the OWNER or the OWNER's agent and claims based on breach of contract or negligence, shall be a claim for an extension of the scheduled construction time.

In giving instructions, the City's Project Manager will have authority to make minor changes in the Work, not involving extra cost or time, and not inconsistent with the purpose of the Work, but otherwise, except in an emergency endangering life or property, no extra work or change will be made unless it goes through the City's written Change Order process and is approved by the City, and no claim for an addition to the contract sum or time will be valid unless so ordered in writing.

The value of any such extra Work or change will be determined in one or more of the following ways:

1. By mutual acceptance of a lump sum.
2. By unit prices named in the contract or subsequently agreed upon.
3. By cost and percentage or by cost and a fixed fee.

If none of the above methods is agreed upon, the CONTRACTOR, provided it receives an order as above, shall proceed with the work. In such case and also under case (3) above, the CONTRACTOR shall keep and present in such form as the City's Project Manager may direct, a correct account of the net cost of labor and materials, together with vouchers. In any case, the City's Project Manager will certify to the amount, including reasonable allowances for overhead and profit, due to the CONTRACTOR. Pending final determination of value, payments on account of changes will be made on the City's Project Manager's

estimate. Furthermore, if the CONTRACTOR claims that any instructions by drawings or otherwise involve extra cost under the Contract Documents, it shall give the City written notice thereof within ten (10) days after the receipt of such instructions, and in any event before proceeding to execute the work, except in emergency endangering life or property, and the procedure shall then be as provided above under this section. Claims will not be processed unless filed in writing before any work has commenced. In addition, if the City's Project Manager deems it inexpedient to correct work injured or done not in accordance with the Contract Documents, an equitable deduction from the Contract Price will be made therefor by Change Order.

K) **Final Payment.** Notwithstanding anything in Exhibit "1" to the contrary, OWNER shall withhold up to 5% of the Contract Price until the date of Substantial Completion, in accordance with the Local Government Prompt Payment Act ("Act"). As provided in Subsection D) above, within 10 calendar days of Substantial Completion, the CONTRACTOR shall create and deliver to OWNER a draft Punchlist detailing Work which must still be completed to reach Final Completion under the terms of this Agreement, and the estimated cost to complete each item. Within thirty (30) calendar days of Substantial Completion for projects with a cost of \$10 million or less or within forty-five (45) calendar days of Substantial Completion for projects with a cost of over \$10 million, the OWNER shall approve a finalized Punchlist. As provided above, the OWNER and CONTRACTOR shall coordinate and cooperate in the development of the final Punchlist. Within 5 calendar days of OWNER finalizing and approving the Punchlist, the OWNER shall deliver the final approved Punchlist to CONTRACTOR.

Within 20 calendar days of the delivery of the final approved Punchlist, and only upon receipt of a proper invoice or payment request from CONTRACTOR, OWNER shall pay to CONTRACTOR the remaining contract balance, including all retainage previously withheld, less an amount equal to 150 % of the estimated cost to complete the items on the Punchlist, except as provided herein. Should no Punchlist be created within the thirty or forty-five day timeframe, as applicable, because of the failure of CONTRACTOR to cooperate with OWNER, OWNER shall pay to CONTRACTOR the remaining contract balance, including all retainage previously withheld, less an amount equal to 150 % of the estimated cost to complete the items on the Punchlist as determined solely by the OWNER.

CONTRACTOR may submit a proper invoice or payment request for the amount of retainage held to complete the Punchlist items only once all Punchlist items have been completed to the satisfaction of the OWNER. OWNER may continue to withhold retainage if a good faith dispute exists as to whether one or more Punchlist items has been completed in accordance with the terms of this Agreement up to 150% of the total costs to complete those items in dispute.

The date of Final Completion shall be no less than 30 days following delivery of the final approved Punchlist to CONTRACTOR.

The remaining retainage amount withheld shall be released with the Final Payment after the issuance of the Final Completion Certificate. The Final Completion Certificate shall be issued upon completion of all remaining Punchlist items. Consent of surety is required for final payment. OWNER 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 OWNER all close-out documentation.

L) **Notices.** Notwithstanding anything in Exhibit “1” to the contrary, Notices to the City shall be delivered to:

City Manager
City of Cocoa, Florida
65 Stone Street
Cocoa, FL 32922

Any Notice given as provided herein shall be deemed received as follows: if delivered by personal service, on the date so delivered; if delivered to an overnight courier service, on the business day immediately following delivery to such service; and if mailed, on the third business day after mailing.

M) **Public Records.** Notwithstanding anything in Exhibit “1” to the contrary, if Contractor fails to comply with Section 119.0701, 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 Article.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: City Clerk, City of Cocoa, 65 Stone Street, Cocoa, FL 32922, cityclerk@cocoaf.org or 321-433-8484.

N) **Project Manager.** The primary function of the OWNER is to provide the general administration of the contract. In performance of these duties, **Gary Palmer** by email **gpalmer@cocoaf.gov** or his authorized representative is the OWNER’s Project Manager during the entire period of construction. The OWNER (CITY) may change the Project Manager during the term of this contract.

O) **Guarantee.** Notwithstanding anything in Exhibit “1” to the contrary, 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 OWNER 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 OWNER, 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 OWNER. The one (1) period is not a limitation upon manufacturer warranties or CONTRACTOR's payment and performance Bond(s). To the extent that greater guarantees or warranties are provided in Exhibit "1", such guarantees or warranties shall supersede this Subsection.

P) **Miscellaneous.** Notwithstanding anything to the contrary in Exhibit "1", the following provisions are added to the Agreement:

i. **Sovereign Immunity.** 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.

ii. **Attorney's Fees.** Unless otherwise expressly provided in this Piggyback Rider, should either party bring an action to enforce any of the terms of this Agreement, each party shall bear its own costs and expenses of such action including, but not limited to, reasonable attorney's fees, whether at settlement, trial or on appeal. This provision does not apply to Contractor's surety.

iii. **Performance and Payment Bond.** A performance and payment bond shall be required for this Piggyback Rider in the Form attached hereto as **Exhibit "5."**

iv. **Governing Law and Venue.** This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida. Venue for any state action or litigation shall be BREVARD County, Florida. Venue for any federal action or litigation shall be in the Middle District of Florida, Orlando Division. The Contractor's surety is bound by this provision.

v. **Mediation.** The parties agree that should any dispute arise between them regarding the terms or performance of this Agreement, both parties will participate in mediation. The parties agree to equally share the cost of the mediator. Should the parties fail to resolve their differences through mediation, then any cause of action filed hereunder shall be filed in the Circuit or County Court for BREVARD County, Florida. The Contractor's surety is bound by this provision.

vi. **E-Verify.** Pursuant to section 448.095, Florida Statutes, beginning January 1, 2021, any City contractors shall register with and use the U.S. Department of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all employees hired on and after January 1, 2021. City Contractors must provide evidence of compliance with section 448.095, Florida Statutes. Evidence shall consist of an affidavit from the Contractor stating all employees hired on and after January 1, 2021 have had their work authorization status verified through the E-Verify system and a copy of their proof of registration in the E-Verify system. Failure to comply with this provision will be a material breach of the contract, and shall result in the immediate termination of the contract without penalty to the City. The City Contractor shall be liable for all costs incurred by the City securing a replacement contract, including but not limited to, any increased costs for the same services, any costs due to delay, and rebidding costs, if applicable. If the City Contractor utilizes Subcontractors the following shall apply:

- a. Contractor shall also require all subcontractors performing work under the Agreement to use the E-Verify system for any employees they may hire during the term of the Agreement.
- b. Contractor shall obtain from all such subcontractors an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as defined in section 448.095, Florida Statutes.
- c. Contractor shall provide a copy of all subcontractor affidavits to the City upon receipt and shall maintain a copy for the duration of the Agreement.

vii. **No Discrimination.** Contractor may not discriminate against any employee employed under this Agreement, or against any applicant for employment because of race, color, religion, gender, national origin, age, pregnancy, handicap or marital status.

IN WITNESS WHEREOF, authorized representatives of the CITY and the CONTRACTOR have executed this Piggyback Rider to the Original Government Contract on the day and year below noted:

CITY:

CONTRACTOR

Michael Blake, Mayor

Date: _____

ATTEST:

City Clerk

Printed Name and Title: _____

Date: _____

EXHIBIT “5”

Performance and Payment Bond

In compliance with the Florida Statutes Chapter 255.05 (1) (a)

BOND NO.:	
Contractor Name:	
Contractor Address:	
Contractor Phone No.:	
Surety Company:	
Surety Agent:	
Owner Name:	City of Cocoa
Owner Address:	65 Stone St. Cocoa, Florida 32922
Owner Phone No.	(321) 433-8833
Owner Fax No.	(321) 433-8860
Owner Email:	Purchasing@cocoaf1.org
Contract Date:	
Contract Amount:	\$
Bond Amount:	\$
Contract No. (if applicable):	
Description of Work:	
Project Address:	

Legal Description:

Bid Number:

BY THIS BOND, we _____ as Principal
 and _____ a Corporation as Surety,
 are bound to City of Cocoa, herein called Owner, in the sum
 of \$ _____, for payment of which we bind
 ourselves, our heirs, Personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

- a. Performs the contract dated _____, 20_____, between Principal and Owner for construction of _____ as specified for the _____ location, the contract being made a part of this bond by reference, at the times and in the manner prescribed in this contract; and
- b. Promptly makes payments to all claimants, as defined in section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution if the work provided for the contract; and
- c. Pays Owner all losses, damages, including delay damages, expenses, and costs that Owner sustains because of a default by Principal under the contract; and
- d. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract and by law, then this bond is to be void; otherwise it remains in full force and effect.
- e. In any action against this performance bond, the Owner is entitled to attorney’s fees under section 627.756, Florida Statutes, and Danis Industries Corp. v. Ground Improvement Techniques, 645 So.2d 420 (Fla. 1994) and McCarthy Bros. Co. v. Tilbury Construction, Inc., 849 So.2d 7 (Fla. 1st DCA 2003), including appellate attorney’s fees.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety’s obligation under this bond.

IN WITNESS WHEREOF, the said Principal and Surety have assigned and sealed this instrument this _____ day of _____ 20_____.

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

Signature_____

Title_____

SURETY

Company:

(Corporate Seal)

Signature_____

Title_____