



CITY OF
STAUGUSTINE ..
---EST. 1565---
NATION'S OLDEST CITY

RECEIVED

October 15, 2020

OCT 18 2020

Engineered Spray Solutions, LLC
Attn: Mr. James Collier
1306 Banana Road
Lakeland, FL 33810

BY: _____

RE: Agreement for RFP #PW2020-05 for Sanitary Sewer Manhole Inspections and Rehabilitation

Dear Mr. Collier:

Accompanying this cover letter for your firm's records is the completely executed Agreement between the City of St. Augustine and Engineered Spray Solutions, LLC for Sanitary Sewer Manhole Inspections and Rehabilitation. We look forward to an excellent working relationship.

Please feel free to contact me at my office (904) 209-4305 or, via email, at swhitener@citystaug.com if you have any questions.

Sincerely,

Sharon F. Whitener, CPPO
Procurement Manager

SFW

Enclosure

xc: John P. Regan, City Manager
Meredith L. Breidenstein, Ass.istnt City Manager
Reuben C. Franklin, Jr., Public Works Director
Todd J. Grant, Utilities Director
James C. Piggott, General Services Director
File

**CONSTRUCTION SERVICES AGREEMENT
BETWEEN THE
CITY OF ST. AUGUSTINE
AND ENGINEERED SPRAY SOLUTIONS LLC FOR THE
SANITARY SEWER MANHOLE INSPECTIONS AND REHABILITATION PROJECT**

THIS AGREEMENT is entered into by and between the CITY OF ST. AUGUSTINE ("the City"), whose address is P. O. Box 210, St. Augustine, Florida 32085-0210, and ENGINEERED SPRAY SOLUTIONS.LLC ("Contractor"), whose address is 1306 Banana Road, Lakeland, Florida 33810. All references to the parties hereto include the parties, their officers, employees, agents, successors, and assigns.

In consideration of the payments hereinafter specified, the covenants and conditions of this Agreement, and other good and valuable consideration, the adequacy of which is hereby acknowledged, Contractor agrees to furnish and deliver all materials and perform all services and labor required for ("the Work"). In accordance with RFP Number PW2020-05, Contractor shall complete the Work in conformity with this Agreement, which consists of and incorporates all of the following documents: (1) advertisement for proposals; (2) Instructions to Respondents; (3) addenda; certifications, and affidavits; (4) proposal submittals; and (5) this Agreement, including the Scope of Work, Specifications, General Conditions and any Special Conditions or other attachments. If any provision in the body of this Agreement conflicts with any attachment hereto, the terms of this Agreement shall prevail unless the referenced attachment is a requirement pursuant to grant funding. This Agreement, including attachments, shall take precedence over all solicitation documents (items 1 - 4). The parties hereby agree to the following terms and conditions.

1. TERM OF AGREEMENT

- (a) The term of this Agreement shall run from the Effective Date to the Final Completion Date. Time is of the essence for each and every aspect of this Agreement. Where additional time is allowed to complete the Work, the new time limit shall also be of the essence. All provisions of this Agreement that by their nature extend beyond the Completion Date shall survive termination or expiration of this Agreement.
- (b) **Effective Date.** The Effective Date is the date upon which the last party to this Agreement has dated and executed the same.
- (c) **Completion Date.** The Completion Date of this Agreement is September 30, 2021, unless extended by mutual written agreement of the parties. The Completion Date for specific work orders shall be the time for completion stated in the work order; which shall be agreed upon by both parties.
- (d) This Agreement may be renewed by mutual and written consent of each party for no more than a total of four (4) consecutive years.

2. COMMENCEMENT OF WORK

- (a) Contractor shall commence the Work within fourteen (14) days of issuance of a Work Order by the City, this date shall be known as the "Commencement Date." Contractor shall prosecute the Work regularly, diligently, and uninterruptedly so as to complete the Work ready for use in accordance with the Scope of Work and the time for completion stated therein. Contractor shall not commence the Work until any required submittals are received and approved.

3. LIQUIDATED DAMAGES

- (a) If Contractor neglects, fails, or refuses to satisfactorily complete the Work by the Completion Date, Contractor shall, as a part of the consideration for this Agreement, pay the City the amount stipulated herein, not as a penalty, but as liquidated damages for such breach, for each calendar day Contractor is in default thereafter. This amount is fixed and agreed upon between the parties due to the impracticability and extreme difficulty of ascertaining the actual damages the City would sustain in such event. The amount of liquidated damages shall be \$500.00 per day. Liquidated damages shall be deducted from payments as they become due and may be deducted from the retainage due upon completion. They constitute an agreed-upon liquidated sum solely for consequential damages attributable to delay and are not a substitute for any other consequential damages incurred by the City, such as the cost of finding a replacement Contractor for completion of the Work if this Agreement is terminated by the City for non-performance.
- (b) Contractor shall not be charged with liquidated damages or any excess cost when the City determines that Contractor's reasons for the time extension are acceptable in accordance with **FORCE MAJEURE; DELAYS; EXTENSION OF COMPLETION DATE, as described below**. A written extension of the Completion Date constitutes a waiver of liquidated damages to the new Completion Date unless expressly provided therein to the contrary.

4. DELIVERABLES

- (a) The Work is specified in the Scope of Work, Exhibit A Contractor shall deliver all products and deliverables as stated therein. Contractor is responsible for the professional quality, technical accuracy, and timely completion of the Work. Both workmanship and materials shall be of good quality. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials provided. Unless otherwise specifically provided for herein, Contractor shall provide and pay for all materials, labor, and other facilities and equipment necessary for performance of the Work. The City's Project Manager shall make a final acceptance inspection of the deliverables when completed and finished in all respects.
- (b) If not otherwise addressed in the Scope of Work and/or Specifications, upon written request, Contractor shall submit written progress reports to the City's Project Manager at the frequency requested in the form approved by the Project Manager at no additional cost to the City. The progress report shall provide an updated progress schedule, taking into account all delays and approved changes in the Work. Failure to provide a progress report will be cause to withhold payment.

5. OWNERSHIP OF DELIVERABLES

All deliverables, including Work not accepted by the City, are City property when Contractor has received compensation therefor, in whole or in part. Any City source documents or other City or non-City documents, specifications, materials, reports, or accompanying data developed, secured, or used in the performance of the Work, excluding proprietary materials, as outlined in the Statement of Work, are City property and shall be safeguarded and provided to the City upon request. City plans and specifications shall not be used on other work and, with the exception of the original plans and specifications, shall be returned to the City upon request. This obligation shall survive termination or expiration of this Agreement.

6. FUNDING OF AGREEMENT

- (a) For satisfactory performance of the Work, the City agrees to pay Contractor in accordance with the Unit Price Schedule, Exhibit D and as set forth in each Work Order and billed in accordance with the terms of the Work Order.

7. PAYMENT OF INVOICES

- (a) Contractor shall submit monthly itemized invoices by one of the following two methods: (1) by mail to the City of St. Augustine, Financial Management, P. O. Box 210, St. Augustine, FL 32085-0210, or (2) by e-mail to purchasing@citystaug.com. Each invoice shall be submitted in detail sufficient for proper pre-audit and post-audit review. If necessary, for audit purposes, Contractor shall provide additional supporting information as required to document invoices.

8. CONTRACT PAYMENT AND COMPLIANCE WITH THE LOCAL GOVERNMENT PROMPT PAYMENT ACT

- (a) Each month, the Contractor shall submit an application for payment for work performed to that point. The Owner will process and issue payment in compliance with the requirements of the Florida Local Government Prompt Payment Act as described below. Final payment in the amount of ten percent (10%) of the total project amount will be retained pending final inspection and acceptance of the project by the Owner and proof of complete payment to all subcontractors and suppliers.
- (b) All invoices shall include the following information: (1) City contract number; (2) City encumbrance number; (3) City work-order number, if applicable; (4) Contractor's name and address (include remit address, if necessary); (5) Contractor's invoice number and date of invoice; (6) City Project Manager or Work Order Manager, if applicable; (7) Contractor's Project Manager; (8) supporting documentation as to cost and/or project completion (as per the cost schedule and other requirements of the Statement of Work; for work-orders, see special requirements under **WORK ORDERS**); (9) Progress Report (if required); (10) Diversity Report (if otherwise required herein). Invoices that do not correspond with this paragraph shall be returned without action, stating the basis for rejection. Payments shall be made within twenty (20) business days of receipt of an approved invoice. Disputes regarding invoice sufficiency are resolved pursuant to the dispute resolution procedure of this Agreement.
- (c) As conditions precedent to final payment under this Contract, the Contractor shall furnish any manufacturers' guarantees or warranties for materials provided or equipment installed in the Work; shall have performed all other requirements pursuant to the Contract Documents; shall warrant all workmanship for a period of one (1) year after the date of final acceptance of the Work by the Owner and shall furnish signed copies of the Contractor's Warranty Guarantees signed by Contractor, subcontractors, materialsmen, suppliers, laborers or others furnishing work, labor, materials, machinery or fixtures in the performance of the Work. The City shall be the expressly designated beneficiary of any and all Warranty Guarantees. Acceptance of any Work or any possession taken by Owner shall not operate as a waiver of any provision of the Contract Documents or any right or power reserved to Owner, including any right to damages provided in the Contract Documents.

- (d) In order to comply with the provisions of the Florida Local Government Prompt Payment Act, the City designates the following as its Agent:
1. James Wheeler, P.E.
Public Works Department
City of St. Augustine
P.O. Box 210
St. Augustine, FL 32085-0210
904-209-4276 (Office)
904-209-4286 (Fax)
Email: jwheeler@citystaug.com
 2. The City's Agent is required to review invoices or payment requests prior to processing for payment.
 3. The due date for payment of construction services by the City shall be determined as follows:
 - a) If the City's agent must approve the payment request or invoice submitted by the Contractor before the payment request or invoice is submitted to the City, payment shall be due twenty-five (25) business days after the date on which the payment request or invoice is stamped as received as provided in Section 218.74(1), F.S. The Contractor may send the City an overdue notice. If the payment request or invoice is not rejected within four (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.
 - b) If the City's agent need not approve the payment request or invoice submitted by the Contractor, payment is due twenty (20) business days after the date on which the payment request or invoice is stamped as received as provided in Section 218.74(1), F.S.
 - c) If a payment request or invoice submitted by the Contractor does not meet the contract requirements, the City must reject the payment request or invoice within twenty (20) business days after the date on which the payment request or invoice is stamped as received as provided in Section 218.74(1), F.S. The rejection must be written and must specify the deficiency and the action necessary to make the payment request or invoice proper.
 - d) If a payment request or invoice is rejected and the Contractor submits a payment request or invoice which corrects the deficiency, the corrected payment request or invoice must be paid or rejected ten (10) business days after the date the corrected payment request or invoice is stamped as received as provided in Section 218.74(1), F.S.
 - e) If a dispute between the City and the Contractor cannot be resolved by the procedure described above, the dispute shall be resolved in accordance with the dispute resolution procedure described in Section 217.76(2), F.S.

- f) If the City disputes only a portion of a payment request or invoice submitted by the Contractor, the City shall pay the undisputed portion in a timely manner in accordance with subsections (a) and (b) above.

4. Punch List

- a) For projects less than \$10,000,000.00.
Within thirty (30) calendar days of reaching Substantial Completion of the Work as defined in the Contract or, if not defined in the Contract, upon reaching beneficial occupancy or use, the City's Project Manager, the Project Engineer and the Contractor shall review the work, note any deficiencies and develop a single list of items required to render the construction services purchased by the City complete, satisfactory and acceptable. The list shall be delivered to the

Contractor no later than five (5) calendar days after it has been developed and reviewed.

- b) For projects more than \$10,000,000.00.
Within thirty (30) calendar days or, if extended by Contract, up to sixty (60) calendar days, of reaching Substantial Completion of the Work or, if not defined in the contract, upon reaching beneficial occupancy or use, the City's Project Manager, the Project Engineer and the Contractor shall review the Work, note any deficiencies and generate a list of items required to render the construction services purchased by the City complete, satisfactory and acceptable. The list shall be delivered to the Contractor no later than five (5) days after it has been developed and reviewed.

- c) The Final Contract Completion Date shall be no fewer than thirty (30) days after delivery of the list of items. If the list is not provided to the Contractor by the agreed upon date for delivery of the list, the Contract Term for completion shall be extended by the number of days the City exceeded the delivery date.

- (e) **Payments withheld.** The City may withhold or, on account of subsequently discovered evidence, nullify, in whole or in part, any payment to such an extent as may be necessary to protect the City from loss as a result of: (1) defective Work not remedied; (2) failure of Contractor to make payments when due to subcontractors or suppliers for materials or labor; (3) failure to maintain adequate progress in the Work; (4) damage to another contractor; or (5) any other material breach of this Agreement. Amounts withheld shall not be considered due and shall not be paid until the ground(s) for withholding payment have been remedied.

- (f) **Payments,** The City shall pay Contractor one hundred percent (100%) of each approved invoice.

9. **COST OF LIVING INCREASES.** A Consumer Price Index ("CPI") - based Cost Schedule increase may be requested in writing no later than three months before the contract renewal date. The increase will be limited to the lesser of five percent or the result of the CPI percentage increase calculation expressed below. The CPI percentage increase shall be calculated by using the Consumer Price Index for All Urban Consumers ("CPI-U") numbers provided by the Bureau of Labor Statistics. The CPI percentage increase shall be calculated by subtracting from the most recent May CPI-U number the CPI-U number for the previous May, then dividing the remainder

by the previous May's number, and finally, multiplying the quotient by 100. Cost Schedule increases shall be prorated based upon the number of calendar months in the City's fiscal year that the contract has been in effect. (For example, a cost schedule increase for renewal of a contract initiated in March (six months into the City's fiscal year), would be limited to the lesser of either one-half of the CPI percentage increase or 2.5 percent upon renewal in October.) In the event this contract includes a provision for fuel adjustment, and an upward fuel adjustment is made during the contract year, the CPI percentage increase shall be multiplied by the percentage of the Total Compensation allocated to non-fuel costs. For example, if it is determined that the cost of fuel is 20 percent of the Total Compensation, the CPI percentage increase shall be multiplied by 0.8.

10. **PAYMENT AND RELEASE** Contractor's acceptance of final payment shall constitute a release in full of all Contractor claims against the City arising from the performance of this Agreement, with the exception of any pending claims for additional compensation that have been documented and filed as required by this Agreement.
11. **INDEMNIFICATION** Contractor shall indemnify and hold harmless, release, and forever discharge the City, its public officers, employees, agents, representatives, successors, and assigns, from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor, its employees or sub-contractors, in the performance of the Work and resulting from damages to property, personal injury, or loss of life.
12. **INSURANCE AND PERMITS.** Contractor shall acquire and maintain, at its own expense, all permits, and licenses required by law and shall maintain the same in full force and effect. Contractor is responsible for conformance with all State and Federal regulations and requirements. City of St. Augustine permit fees shall be waived.

Contractor shall provide all insurance required by Exhibit B, Insurance Requirements, and shall not commence Work until it has provided Certificates of Insurance to the City as per Exhibit B. Receipt of Certificates of Insurance indicating less coverage than required does not constitute a waiver of the Insurance Requirements. Contractor waives its right of recovery against the City to the extent permitted by its insurance policies. Contractor's insurance shall be considered primary, and City insurance shall be considered excess, as may be applicable to Contractor's obligation to provide insurance.

13. **FUNDING CONTINGENCY.** This Agreement is at all times contingent upon funding availability, which may include a single source or multiple sources, including, but not limited to: (1) ad valorem tax revenues appropriated by the City's Commission; (2) annual appropriations by the Florida Legislature, or (3) appropriations from other agencies or funding sources. Agreements that extend for a period of more than one Fiscal Year are subject to annual appropriation of funds in the sole discretion and judgment of the City's Commission for each succeeding Fiscal Year. Should the Work not be funded, in whole or in part, in the current Fiscal Year or succeeding Fiscal Years, the City shall so notify Contractor and this Agreement shall be deemed terminated for convenience five (5) days after receipt of such notice, or within such additional time as the City may allow. For the purpose of this Agreement, "Fiscal Year" is defined as the period beginning on October 1 and ending on September 30.
14. **PROJECT MANAGEMENT AND PERSONNEL**
 - (a) The Project Managers listed below shall be responsible for overall coordination and management of the Work. Either party may change its Project Manager upon three (3) business

days prior written notice to the other party. Written notice of change of address shall be provided within five (5) business days. All notices shall be in writing to the Project Managers at the addresses below and shall be sent by one of the following methods: (1) hand delivery; (2) U.S. certified mail; (3) national overnight courier; (4) e-mail or, (5) fax. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier are deemed delivered one (1) business day after having been deposited with the courier. Notices via e-mail or fax are deemed delivered on the date transmitted and received.

CITY

James Wheeler, P.E., Project Manager
 City of St. Augustine
 P.O. Box 210
 St. Augustine, Florida 32085-0210
 904-209-4276 (office)
 904-209-4286 (fax)
 E-mail: jwheeler@citystaug.com

CONTRACTOR

James J. Collier, Project Manager
 Engineered Spray Solutions LLC
 1306 Banana Road
 Lakeland, Florida 33810
 863-577-4821 (office)
 863-853-8593 (fax)
 E-mail: jcollier@ess-1.net

- (b) The City's Project Manager shall have sole and complete responsibility for transmitting instructions, receiving information, and communicating City policies and decisions regarding all matters pertinent to performance of the Work, and may approve minor deviations in the Work that do not affect the Total Compensation or Completion Date or otherwise significantly modify the terms of the Agreement. For Work Order-based contracts, the City may designate a "Work Order Manager" on the Work Order, who will serve as the Project Manager for that Work Order and shall have the same responsibilities as the City's Project Manager. The City's Project Manager may approve minor deviations in the Work that do not affect the Total Compensation or Completion Date or otherwise significantly modify the terms of the Agreement. The City's Project Manager and, as appropriate, other City employees, shall meet with Contractor when necessary in the City's judgment to provide decisions regarding performance of the Work, as well as to review and comment on reports.
- (c) Contractor shall provide efficient supervision of the Work, using its best skill and attention. Contractor shall keep on the worksite during its progress a competent superintendent, satisfactory to the City. The superintendent shall not be changed except with the City's consent, unless the superintendent proves to be unsatisfactory to Contractor and/or ceases to be in its employ. The superintendent shall represent Contractor in the absence of Contractor's Project Manager. All directions given to him shall be as binding as if given to Contractor. If the City produces documented evidence and informs the Contractor that any person on the job is incompetent, disorderly, or is working contrary to the Agreement or the City's instructions, that person shall thereupon be immediately dismissed from the project and shall not be given employment on any work connected with this Agreement. The City may request Contractor replace its Project Manager if said manager fails to carry the Work forward in a competent manner, follow instructions or specifications, or for other reasonable cause.
- (d) Contractor shall maintain an adequate and competent professional staff. Contractor's employees, subcontractors, or agents shall be properly trained to meet or exceed any specified licensing, training and/or certification applicable to their profession. Upon request, Contractor shall furnish proof thereof.

15. SCHEDULING AND WORK PLANNING; PROGRESS REPORTING

- (a) **Pre-work Conference.** Within ten (10) days after execution of this Agreement, Contractor shall schedule a pre-work conference with the City's Project Manager to discuss scheduling and other matters. Contractor shall provide a work plan for the City's approval not fewer than five (5) days prior to the pre-work conference. The City shall have ten (10) days to review the work plan. Not less than five (5) days prior to the pre-work conference, Contractor shall provide the City a list of each subcontract exceeding ten percent (10%) of the Total Compensation. The list shall include: (1) name, address, contract, phone number and email address of subcontractor, (2) description of subcontract work, and (3) estimated value of work.
- (b) **Progress Reports.** Contractor shall provide to the City the project schedule and update/status reports as provided in the Scope of Work. Reports will provide detail on progress of the Work and outline any potential issues affecting completion or the overall schedule. Reports may be submitted in any form agreed to by City's Project Manager and Contractor, and may include emails, memos, and letters.
- (c) **Daily Reporting.** The City may require Contractor to provide a daily report regarding the progress of the Work. The need for a daily report shall be determined at the pre-work conference. If required, a form shall be completed for each day any Work is performed until the project is accepted by the City. Completed forms shall be submitted to the City's Project Manager or other authorized representative by 9:00 a.m. of the following day.
- (d) **Progress Meetings.** The City may elect to conduct on-site progress meetings with Contractor on a frequency to be determined by the City. In such event, Contractor shall make available its Project Manager and/or superintendent and other appropriate personnel to discuss matters pertinent to the Work.
- (e) **Failure to Meet Schedule.** If progress of the Work falls five percent (5%) or more behind schedule, except as a result of City-approved delays, Contractor shall take all necessary steps to augment the work effort to get the project back on schedule. Should the progress of the Work fall ten percent (10%) or more behind schedule, the City may advise Contractor through a "cure" notice that this Agreement is subject to termination for cause if the failure is not cured within the time frame specified in said notice.

16. FORCE MAJEURE; DELAYS

- (a) **Force Majeure.** Contractor shall not be liable for failure to carry out the terms of this Agreement to the extent such failure is due to a Force Majeure event, except for failures that could have been reasonably foreseen and guarded against so as to avoid or reduce the adverse impact thereof. A Force Majeure event is hereby defined as the failure to carry out any of the terms of this Agreement due to any one of the following circumstances beyond the control of Contractor: (a) the operation and effect of rules, regulations, or orders promulgated by any commission, county, municipality, or governmental agency of the State of Florida or the United States, (b) a restraining order, injunction, or similar decree of any court of competent jurisdiction, (c) war, (d) flood, (e) earthquake, (f) fire, (g) severe wind storm, (h) acts of public disturbance, (i) quarantine restrictions, (j) epidemics, (k) strikes, (l) freight embargoes, or (m) sabotage. The times specified herein for performances include delays that can ordinarily be anticipated due to adverse weather conditions. The

City is not obligated to grant an extension of time due to adverse weather conditions unless such conditions rise to the level of Force Majeure.

- (b) **Delay.** Contractor shall not be compensated for delays caused by Contractor's inefficiency, rework made necessary by Contractor's error, failure to perform the Work as scheduled, or any other corrective or productivity measures made necessary by errors, omissions, or failures to properly perform the Work. Neither shall the Contractor be compensated for delays caused by events by force majeure as described in sub-para (a) above. Within ten (10) days after the onset of a delay, Contractor shall notify the City in writing of the delay, which shall provide: (1) a detailed description the delay and its probable duration, (2) the specified portion of the Work affected, and (3) an opinion as to the cause of the delay and liability (if any) for the delay. Notices provided more than ten (10) days after the inception of the delay shall only be effective as to additional time incurred during the ten (10) day period preceding receipt of such notice. In the case of continuing cause delay for the same cause, only one notice of delay is necessary. **Failure to provide this notice waives any claim for extension of time resulting from such delay.** If the delay is due to the failure of another City contractor to complete its work in a timely manner, changes ordered in the Work, a Force Majeure event, or any other cause which the City, in its sole judgment and discretion, determines to justify the delay, then the Completion Date may be extended as necessary to compensate for the delay. All time extensions shall be in the form of a written amendment signed by both parties.

17. MODIFICATION OF SPECIFICATIONS; CHANGE ORDERS; EMERGENCY CHANGES IN WORK

- (a) **Modification of Specifications.** No oral agreement or conversation with any officer, agent, or employee of the City after execution of this Agreement shall affect or modify any of its terms. No one is authorized to change any provision of the specifications without written authorization of the City. The presence or absence of a City inspector shall not relieve Contractor from any requirements of this Agreement.
- (b) **Change Orders**
- (i) The City may alter, add to, or deduct from the Work by executing a Change Order without liability to Contractor, except for the reasonable cost of any additional Work. All such Work within Contractor's capacity to perform shall be performed pursuant to the Change Order. Any associated claim for extension of time will be adjusted when the Change Order is issued. The parties shall negotiate the cost of the Change Order on an equitable basis, which may be determined in one or more of the following ways: (1) estimate and acceptance of a lump sum, (2) unit prices named in the contract or subsequently agreed upon, (3) costs and percentage or by (4) cost and a fixed fee. If the parties cannot agree upon cost, Contractor shall implement the Change Order and shall maintain and present in such form as the City Project Manager may direct the correct amount of the net cost of labor and materials, together with vouchers. The Project Manager will certify the amount due Contractor, including reasonable allowances for overhead and profit. Pending a final determination of value, payments will be based upon the City Project Manager's certification. Final resolution of the amount due to Contractor shall be pursuant to the dispute resolution procedure.

- (ii) For any Change Order requests submitted by Contractor, the City may determine that City instructions to correct deficient Work, to stop the Work due to deficiencies in the Work, or any other matters that impose additional costs upon Contractor, do not warrant an increase in the Total Compensation or extension of the Completion Date. If Contractor disputes this determination, final resolution shall be pursuant to the dispute resolution procedure.
- (c) **Emergency Changes in Work.** In the event an emergency endangering life or property requires immediate action, the City may give Contractor an oral instruction to proceed with an emergency change in the Work, which will be confirmed in writing within five (5) days. Within fifteen (15) days after commencement of the emergency change in the Work, Contractor shall provide the City with a written estimate of any increased costs or delays as a result thereof. **Failure to so notify the City constitutes a waiver of any right to an extension of time or increase in compensation.** Within fifteen (15) days after receipt of Contractor's estimate, the parties shall negotiate a Change Order. If unable to reach agreement, disputed issues shall be resolved pursuant to the dispute resolution procedure. In no event shall Contractor decline to perform the emergency change in the Work.

18. TERMINATION AND SUSPENSION

- (a) **City Termination for Cause.** The Agreement may be terminated by the City for cause in the event of any breach hereof, including, but not limited to, Contractor's: (1) failing to carry forward and complete the Work as provided herein; (2) failing to comply with applicable laws, regulations, permits, or ordinances; (3) failing to timely correct defective Work; (4) making a general assignment for the benefit of its creditors; (5) having a receiver appointed because of insolvency; (6) filing bankruptcy or having a petition for involuntary bankruptcy filed against it; (7) failing to make payments when due to subcontractors, vendors, or others for materials or labor used in the Work; (8) making a material misrepresentation to the City regarding the Work, or (9) any other material breach of this Agreement. In such event, the City shall provide Contractor with written notice of its intention to terminate this Agreement, stating the nature of the deficiency and the effective date of termination. At the City's sole judgment and discretion, the City may afford Contractor an opportunity to cure said deficiency, in which event the notice shall specify the time allowed. Upon termination, the City may take possession of the premises and of all materials thereon and finish the Work by whatever means it deems expedient. In such event, Contractor shall not receive any further payment until the Work is completed by the City. Contractor shall be liable for all costs involved in completing the Work, including additional managerial and administrative services, which shall be offset against any amount due to Contractor.
- (b) **City Termination for Convenience.** Notwithstanding any other provision hereof, the City may at any time terminate this Agreement or any Work issued under it, in whole or in part, without cause, upon thirty (30) days written notice to Contractor. In such event, Contractor shall be compensated for any Work performed prior to the date of termination and for materials that were ordered prior to receipt of notice of termination that cannot be returned to the vendor, which shall become City property. Upon receipt of notice, Contractor shall discontinue the Work on the date and to the extent specified therein and shall place no further orders for materials, equipment, services, or facilities, except as needed to continue any portion of the Work not terminated. Contractor shall also make every reasonable effort to cancel, upon terms satisfactory to the City, all orders or subcontracts related to the terminated Work. Contractor may not claim any compensation not specifically provided

for herein, including, but not limited to: loss of anticipated profits; idle equipment, labor, and facilities; any additional claims of subcontractors and vendors.

- (c) **City Suspension for Cause.** The City may issue a written partial or full Stop Work Notice in the event Contractor fails to comply with or is negligent in performing any provision hereof. All performance shall immediately cease as per such notice and no further billable costs shall be incurred. The City may terminate this Agreement if Contractor fails or refuses to comply with a Stop Work Notice.
- (d) **City Suspension for Convenience.** The City may direct Contractor to stop Work, in whole or in part, whenever, in the City's sole judgment and discretion, such stoppage is necessary to ensure proper completion of the Work, avoid injury to third persons, or otherwise meet the City's objectives. The City shall provide Contractor not fewer than five (5) days written notice, except in emergency circumstances. Contractor shall immediately comply with such notice. Should such stoppage increase Contractor's cost, an equitable adjustment will be made by Change Order. The notice shall be effective until rescinded in writing, unless the period of suspension is stated in the notice.
- (e) **Contractor's Right to Stop Work or Terminate Agreement**
 - (i) **Stop Work.** Contractor may stop work only under the following circumstances: (1) the Work is ordered temporarily discontinued by a court or other public authority; (2) it is necessary to stop work in order to protect the safety of Contractor or third persons; or (3) the City fails to pay Contractor when due any undisputed and adequately documented sum certified for payment by the City Project Manager. In such event, Contractor shall provide the City not fewer than seven (7) days prior written notice of its intention to stop work, except in emergency circumstances or when necessary to prevent injury to persons or property.
 - (ii) **Termination.** Contractor may terminate this Agreement under only the following circumstances: (1) the Work is ordered discontinued by a court or other public authority, through no act or fault of Contractor, for a period of not fewer than three months; (2) the City fails to pay Contractor when due any undisputed and adequately documented sum certified for payment by the City Project Manager. In such event, Contractor shall provide not fewer than twenty (20) days written notice of its intention to terminate and afford the City the opportunity to cure said deficiency within said time period.
 - (iii) **Duty to Perform.** Except as expressly provided above, in the event of any event, dispute, or other matter arising under this Agreement, Contractor shall fully perform the Work in accordance with the City's written instructions and may claim additional compensation as a Change Order, subject to the dispute resolution procedure.

19. **PROTECTION OF WORK.** Contractor shall protect and prevent damage to all finished and unfinished portions of the Work including, but not limited to, the protection of the same from damage by the elements, theft or vandalism. Restoration of such damage shall be the sole responsibility

of Contractor and shall not be cause for an increase in the Contract Consideration nor any extension of the Term.

- 20. **TRENCH SAFETY.** In the performance of this contract, Contractor may be requested to supply cost estimates for trench excavation to a depth exceeding five feet. Section 553.62, F.S., incorporates the Occupational Safety and Health Administration's excavation safety standards, 29 CFR s 1926.650 Subpart P, as the standard. Contractor shall separately estimate the cost of compliance with those standards as required by Section 553.63, F.S. Such estimate shall be based on the linear feet of trench to be excavated and shall include written assurance of compliance with those standards and any applicable special shoring requirements.
- 21. **NO ASSIGNMENT.** The Contractor may not assign this Contract without the advance written approval of the City. For the purposes of this paragraph, assignment shall be interpreted to include any transfer of more than fifty (50%) percent of the ownership interests of the Contractor whether or not the Contractor is a sole proprietorship, partnership, corporation, limited liability company, limited partnership or any other business, organization or entity.
- 22. **COMPLIANCE WITH PUBLIC RECORDS ACT**

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO TIDS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Telephone: (904) 825-1007
 Email: recordsrequest@citystaug.com
 Mailing Address: City of St. Augustine
 Darlene Galambos, City Clerk
 Public Records Custodian
 P.O. Box 210
 St. Augustine, Florida 32085-0210

Pursuant to Chapter 119, Florida Statutes, the Contractor shall comply with the provisions of the Florida Public Records Act, specifically to:

- 1. Keep and maintain public records required by the City to perform the Work.
- 2. Upon request from the City's custodian of public records, provide the City 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 for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City.
- 4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall

meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

5. A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Contractor of the request, and the Contractor must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
 6. If the Contractor does not comply with the City's public records request for records, the City shall consider such noncompliance a material default of the terms of the contract and shall seek such remedies for such default as provided in the contract or at law.
 7. A contractor who fails to provide the public records to the City within a reasonable time may be subject to penalties under F.S. 119.10.
23. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing in this agreement shall be construed as a waiver of sovereign immunity beyond that provided in Section 768.28, F.S., nor shall anything in this Agreement be construed as increasing the limits of the sovereign immunity of the City as provided in Section 768.28; F.S.

24. ACCESS; WORK AREA; GATES

- (a) **Access.** The City will provide sufficient access to accomplish Work performed on City property. Contractor shall maintain all on-site roadways and paved and unpaved access roadways to and from the worksite in an acceptable and passable condition at no additional cost to the City, and shall, upon conclusion of the Work, return said roadways to City in their original condition. Land access to construction sites is restricted to the route designated by the City. Contractor is responsible for improvements and repairs to access routes required during construction. All access routes shall be used for the purpose of construction only. Contractor shall not disturb lands or waters outside the area of construction, except as may be found necessary and authorized by the City.
- (b) **Work Area.** All Work shall be confined to the designated work area(s). Contractor shall obtain written approval from the City before making any adjustments.

25. ASSIGNMENT AND SUBCONTRACTS

- (a) Contractor shall not sublet, assign, or transfer any Work involving more than fifteen percent (15%) of the total cost of the Work, or assign any monies due hereunder, without the City's prior written consent. As soon as practicable after signing this Agreement, but not fewer than seven (7) business days prior to the effective date of any subcontracts, Contractor shall notify the City's Project Manager in writing of the name of any subcontractor that has not been previously disclosed in the procurement process. Within five (5) business days, after the City receipt of said notification, the City shall indicate its approval or disapproval, which shall not be unreasonably withheld. Failure to timely provide such approval or disapproval shall constitute approval. Neither City approval of a subcontractor nor any other provision of this Agreement creates a contractual relationship between any subcontractor and the City. Contractor shall be allowed a maximum 10% markup of their subcontractor's work for oversight and management.
- (b) Contractor is responsible for fulfilling all work elements in any subcontracts and payment of all monies due. Contractor is fully responsible to the City for the acts and omissions of

its subcontractors and persons directly or indirectly employed by them and shall hold the City harmless from any liability or damages resulting from any subcontract to the extent allowed by law.

26. **AUDIT; ACCESS TO RECORDS.** Until the expiration of three (3) years after expenditure of funds hereunder, the City or its duly authorized representatives shall have access to examine any of Contractor's books and other records involving transactions related to this Agreement. Contractor shall preserve all such records for a period of not fewer than three (3) years. Contractor shall refund any payment(s) that are found to not constitute allowable costs based upon audit examination. All required records shall be maintained until an audit has been completed and all questions arising from it are resolved. Contractor will provide proper facilities for access to and inspection of all required records.

27. **BONDS**

Pursuant to Chapter 255.05 F.S., prior to commencing the work, the Selected Contractor shall execute and record in the public records of St. Johns County a payment and performance bond with a surety insurer authorized to do business in the State of Florida. A certified copy of the recorded bond shall be provided to the City prior to commencement of the work.

- (a) Payment Bond. A payment bond equal to the Total Compensation is required for fixed price contracts and fixed price Work Orders greater than \$100,000; provided, however, that the bond may be reduced by the City, in its sole judgment and discretion, to that amount necessary to ensure payment of all subcontractors and materialmen. The City may require, in its sole judgment and discretion, a payment bond for fixed price contracts and Work Orders of \$100,000 or less in which event the bonding requirement shall be disclosed in the Invitation for Bids or Work Order specifications.
- (b) Performance Bond. A performance bond equal to one hundred twenty-five percent (125%) of the Total Compensation is required for fixed price contracts and Work Orders greater than \$200,000. The City may require, in its sole judgment and discretion, a performance bond for fixed price contracts and Work Orders of \$200,000 or less in which event the bonding requirement shall be disclosed in the Invitation for Bids or Work Order specifications.
- (c) Completed bonds shall be delivered to and accepted by the City prior to commencement of the Work. Bond premiums shall be paid by Contractor. Bonds shall be (1) either in the reproduced form provided in the Bid Documents or in a form approved by the City, and (2) written through a licensed agency that fulfills the requirements of Section 287.0935, F.S.
- (d) **Qualification-Management and Strength.** The Surety executing a bond must be rated no less than "Excellent" for both financial strength and issuer credit, with a rating outlook of stable or positive for both, and must have a financial size rating of VII or better according to the latest information available from A.M. Best Company, Inc.'s rating and analysis web site.
- (e) In lieu of the bond, a Contractor may submit an alternative form of security in the form of cash, money order, certified check, cashier's check, irrevocable letter of credit, or other security acceptable to the City.

28. **CIVIL RIGHTS.** Pursuant to Chapter 760, F.S., Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, age, handicap, or marital status.
29. **CLEANUP; EQUIPMENT REMOVAL.** Upon expiration or termination of this Agreement, Contractor shall restore the worksite to its original condition, except for replacement of vegetation, unless otherwise required by this Agreement. Contractor shall remove from City property and all public and private property all machinery, equipment, supplies, surplus materials, temporary structures, rubbish, and waste materials resulting from its activities. After twenty (20) days, the City may sell or dispose of any materials left at the worksite as it sees fit and deduct the cost of sale or disposal from any amounts due to Contractor. Any revenues obtained shall be applied toward costs incurred by the City, with excess revenues paid to Contractor.
30. **COORDINATION WITH THE CITY AND OTHER CITY CONTRACTORS**
- (a) The City may let other contracts in connection with the Work. Wherever work done by the City or another City contractor is contiguous to Contractor's Work, the respective rights of the various interests shall be established by the City so as to secure completion of the Work. Contractor shall arrange its Work so as not to interfere with the City or other City contractors and join its Work to that of others in a proper manner, and in accordance with the intent of the Scope of Work. Contractor shall perform its Work in the proper sequence in relation to that of other City contractors, as may be directed by the City. Contractor shall afford other City contractors' reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly conduct and coordinate its Work with theirs. Contractor shall take into account all contingent work to be done by others and shall not plead its want of knowledge of such contingent work as a basis for delay or non-performance. Contractor shall be liable for any damage it causes to the work performed by other City contractors.
- (b) If any part of the Work depends for proper execution or results upon the work of other City contractors, Contractor shall inspect and promptly report any defects in the other contractor's work that render it unsuitable for Contractor's Work. **Failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of its Work, except as to defects which may develop in the other contractor's work after execution of the Work.**
31. **CORRELATION AND INTENT OF DOCUMENTS; QUESTIONS OR ISSUES REGARDING PERFORMANCE OF THE WORK**
- (a) This Agreement and all attachments are complementary. What is called for by one is as binding as if called for by all. The intent is to include all labor and materials, equipment, transportation, and incidentals necessary for the proper and complete execution of the Work. Materials or work described in words, which so applied have a well-known technical or trade meaning, shall be held to refer to such recognized standards.
- (b) It is the City's intention to fully assist Contractor in the successful performance of the Work and to respond in a timely manner to questions or issues that arise. Contractor should discuss any questions or issues with the City's Project Manager and communicate such questions or issues in writing when required by this Agreement. The City shall respond through its Project Manager.

32. **DAVIS BACON ACT.** This contract is federally funded and is subject to the provisions of the Davis-Bacon Act (40 U.S.C. 276a to a-7), as supplemented by the Department of Labor Regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing minimum wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. In addition, construction-related subcontracts of more than \$2,000 must include a provision for compliance with the Davis-Bacon Act.
33. **DISPUTE RESOLUTION.**
- (a) **During the course of work.** In the event any dispute arises during the course of the Work, Contractor shall fully perform the Work in accordance with the City's written instructions and may claim additional compensation. Contractor is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by submitting a formal request for additional compensation, schedule adjustment, or other dispute resolution to the City's Project Manager no later than fifteen (15) calendar days after the precipitating event. If not resolved by the Project Manager within five (5) business days, the Project Manager shall forward the request to the Office of the City Manager, which shall issue a written decision within fifteen (15) calendar days of receipt. This determination shall constitute final action of the City and shall then be subject to judicial review upon completion of the Work. **Contractor shall proceed with the Work in accordance with said determination. This shall not waive Contractor's position regarding the matter in dispute.**
- (b) **Invoices.** In the event the City rejects an invoice as improper, and the Contractor declines to modify the invoice, the Contractor must notify the City in writing within ten (10) calendar days of receipt of notice of rejection that the Contractor will not modify the invoice and state the reason(s) therefor. Within five (5) business days of receipt of such notice, if not informally resolved through discussion with the City Project Manager, the Project Manager shall forward the disputed invoice and the Contractor's written response to the Office of the City Manager. The matter shall then proceed as described in subsection (a), above.
34. **DIVERSITY REPORTING.** The City is committed to the opportunity for diversity in its procurement activities and encourages its prime vendors (contractors and suppliers) to make a good faith effort to ensure that women and minority-owned business enterprises (W/MBE) are given the opportunity for maximum participation as sub-contractors. The City will assist Contractor by sharing information on W/MBEs, Contractor shall provide with each invoice a report describing the company names for all W/MBEs, the type of minority, and the amount spent with each at all levels. The report will also denote if there were no W/MBE expenditures.
35. **DUTY TO INSPECT AND REPORT DEFICIENCIES IN PLANS AND SPECIFICATIONS**
- (a) For any Work that is dependent upon conditions at the worksite, Contractor's acceptance of contract award represents and warrants that Contractor has inspected and satisfied itself concerning the nature and location of the Work and general and local conditions, including, without limitation: (1) conditions affecting transportation, disposal, handling, and storage of materials; (2) availability and quality of labor; (3) availability and condition of roads; (4) climatic conditions and seasons; (5) hydrology of the terrain; (6) topography and ground surface conditions; (7) nature and quantity of surface materials to be encountered; (8) equipment and facilities needed preliminary to and during the Work; and (9) all other

matters that can affect the Work and the cost thereof. Contractor's failure to acquaint itself with such conditions will not relieve it from its responsibility for properly estimating the time required or cost of performing the Work. Where the City has investigated subsurface conditions, this data may be provided to Contractor or is available upon request. Contractor must either seek clarification concerning the data or assume the responsibility for its interpretation.

- (b) If Contractor discovers hidden or subsurface conditions that differ materially from those normally expected or indicated in the technical specifications, Contractor shall immediately, and before such conditions are disturbed, notify the City in writing of: (1) subsurface or latent physical conditions differing materially from those indicated in the technical specifications, or (2) unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for herein. The City shall promptly investigate the conditions and determine whether they materially differ so as to cause an increase or decrease in Contractor's cost. Where the differing site conditions materially impact Contractor's cost, an equitable adjustment shall be made and the Agreement modified accordingly. No claim will be allowed if Contractor fails to provide the required notice.
- (c) If Contractor in the course of the Work finds any defect in the plans and specifications, including, but not limited to, any discrepancy between the drawings and the physical conditions at the worksite, or any errors or omissions in the drawings or in the layout, as given by points and instructions, it shall immediately inform the City in writing, which shall be promptly verified by the City. Any Work done after such discovery, until authorized, will be done at Contractor's risk as to cost overruns and modifications necessary to correct deficiencies in the Work. To ensure the proper execution of its subsequent Work, Contractor shall measure Work already in place or completed and shall immediately report any discrepancy between the executed Work and the drawings or other specifications.
36. **EMPLOYMENT ELIGIBILITY.** Contractor must use the United States Department of Homeland Security's E-Verify system ("E-Verify") to verify the employment eligibility of all persons hired by Contractor during the term of this Agreement to work in Florida. Additionally, if Contractor uses subcontractors to perform any portion of the Work (under this Agreement) valued in excess of \$3,000, Contractor must include a requirement in the subcontractor's contract that the subcontractor use E-Verify to verify the employment eligibility of all persons hired by subcontractor to perform any such portion of the Work. Within 30 days of this Agreement's Effective Date, Contractor must provide the City with evidence that Contractor is enrolled in the E-Verify system. Answers to questions regarding E-Verify as well as instructions on enrollment may be found at the E-Verify website: www.uscis.gov/e-verify.
37. **GOVERNING LAW, VENUE, ATTORNEY'S FEES, WAIVER OF RIGHT TO JURY TRIAL.** This Agreement shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. As used herein, "shall" is always mandatory. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state legal proceedings shall be in a court of competent jurisdiction located in St. Johns County; (2) venue for any federal legal proceeding shall be in the federal court for the Middle District of Florida, Jacksonville Division; (3) each party shall bear its own attorney's fees, including appeals; (4) for civil proceedings, the parties hereby consent to trial by the court and waive the right to jury trial.

38. **INTEREST IN THE BUSINESS OF CONTRACTOR; NON-LOBBYING.** Contractor certifies that no officer, agent, or employee of the City has any material interest, as defined in Chapter 112, F.S., either directly or indirectly, in the business of Contractor to be conducted under this Agreement, and that no such person shall have any such interest at any time during the term of this Agreement. Pursuant to Section 216.347, F.S., monies received from the City pursuant to this Agreement shall not be used to lobby the Florida Legislature or any other state agency.
39. **INDEPENDENT CONTRACTOR.** Contractor is an independent contractor. Neither Contractor nor Contractor's employees are employees or agents of the City. Contractor controls and directs the means and methods by which the Work is accomplished. Contractor is solely responsible for compliance with all labor, wage and hour and tax laws pertaining to it, its officers, agents, and employees, and shall indemnify and hold the City harmless from any failure to comply with such laws. Contractor's duties include, but not be limited to: (1) providing Workers' Compensation coverage for employees as required by law; (2) hiring employees or subcontractors necessary to perform the Work; (3) providing any and all employment benefits, including, but not limited to, annual leave, sick leave, paid holidays, health insurance, retirement benefits, and disability insurance; (4) payment of all federal, state and local taxes, income or employment taxes, and, if Contractor is not a corporation, self-employment (Social Security) taxes; (5) compliance with the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq., including payment of overtime as required by said Act; and (6) providing employee training, office or other facilities, equipment and materials for all functions necessary to perform the Work. In the event the City provides training, equipment, materials, or facilities to meet specific City needs or otherwise facilitate performance of the Work, this shall not affect Contractor's duties hereunder or alter Contractor's status as an independent contractor. This paragraph does not create an affirmative obligation to provide any employee benefits not required by law.
40. **INSPECTION AND TESTING OF WORK; REJECTION OF WORK AND MATERIALS; TOOLS, PLANT, AND EQUIPMENT; MATERIAL SUBSTITUTION**
- (a) **Standards for Quality and Workmanship.** All materials, equipment, and supplies furnished by Contractor for permanent incorporation into the Work shall be new and of the quality standards specified. Unless otherwise specified, all material and workmanship shall meet the requirements in the applicable standards specifications of the American Society for Testing and Materials. If two or more brands, makes of material, devices, or equipment are shown or specified, each should be regarded as the equal of the other. First-calls and the finished product shall be equal to the best-accepted standards of the trade class. The finished product shall be equal to the best-accepted standards of the trade for the category of Work performed. The City's intent is to obtain a high-quality job that will operate and function with the lowest possible maintenance costs. Inspection standards will be established to ensure that this objective is achieved.
- (b) **Materials and Equipment Schedules.** The City shall have the right of prior approval for all materials or equipment incorporated into the Work. Within ten (10) days after the date of contract award and before any material or equipment is purchased, Contractor shall submit to the City's Project Manager a complete list of materials or equipment to be incorporated into the Work. The list shall include catalog cuts, diagrams, drawings, and such other descriptive data as may be required. The use of materials or equipment not in accordance with this Agreement may be rejected.
- (c) **Inspection.** The Work and all materials or equipment used therefor are subject to inspection by the City at all times in order to ensure compliance herewith. Upon request,

Contractor shall provide samples of the type and quantity of the various materials used in the Work, as determined and directed by the City. The City's Project Manager and inspector(s) shall be provided access to the Work wherever it is in preparation or progress. Contractor shall provide proper facilities for such access and inspection. Construction contractors shall maintain one complete copy of the drawings and specifications for the Work at the worksite, which shall be made available to the City upon request.

- (d) **Re-examination of Work.** The City may order re-examination of questioned Work and, if so ordered, the Work shall be uncovered by Contractor. If such Work is found to be in accordance with specifications, the City will pay the cost of re-examination and replacement. If such Work is found to be not in accordance with specifications, Contractor will pay such cost.
- (e) **Testing.**
- (i) The City may require that materials be tested prior to incorporation in the Work. In some instances, it may be expedient to make these tests at the source of supply. Therefore, upon request, Contractor shall furnish the City with information identifying the source of supply before incorporating material into the Work. Upon request, Contractor shall furnish two (2) copies of the manufacturer's certificate of compliance with these specifications covering manufactured items. All tests performed by a laboratory to ascertain whether the material, as placed, meets the required specification will be paid for by Contractor. This paragraph does not obligate the City to perform tests for acceptance of material or relieve Contractor of its responsibility to furnish satisfactory material.
- (ii) If the specifications, the City's instructions, laws, ordinances, or any public authority require any Work to be specifically tested or approved, Contractor shall give the City's Project Manager timely notice of its readiness for inspection. If inspection is by an authority other than the City's Project Manager, Contractor's Project Manager shall supply the City's Project Manager with 72 hours prior notice of such inspection. Inspections by the City's Project Manager will be made promptly and, where practicable, at the source of supply. If any Work should be covered up without the prior approval of the City's Project Manager, it shall, if required by the City, be uncovered for examination at Contractor's expense.
- (f) **Rejection of Work and Materials.** Contractor shall promptly notify the City of any defective material and shall not incorporate such material into the Work. The City may reject all Work and material that does not conform to this Agreement, which shall be removed and replaced with approved quality material at no additional cost to the City. If the City deems any portion of the Work unsatisfactory, Contractor shall rework those areas so that the total Work is completed in a manner satisfactory to the City. If disputed, Contractor may submit a Change Order, subject to the dispute resolution procedure.
- (g) **Tools, Plant, and Equipment.** If at any time before commencement of or during progress of the Work, tools, plant, or equipment appear to the City to be insufficient, inefficient, or inappropriate to secure the quality of Work or the proper rate of progress, the City may order Contractor to increase its efficiency, to improve its character, or to augment the number of or substitute new tools, plant, or equipment, as the case may be. Contractor shall conform to such order. If Contractor maintains that any such order is not in conformance with this Agreement, is unnecessary, or requires Contractor to incur excessive costs or

delays, Contractor may submit a Change Order, subject to the dispute resolution procedure. Failure of the City to make such demand shall not relieve Contractor of its obligation to secure the quality of the Work and the rate of progress necessary to timely complete the Work.

- (h) **Material substitution.** Except where otherwise indicated, whenever a material or a piece of equipment required in the Work is shown in the specifications by using the name of the proprietary product or that of a particular manufacturer or vendor, any material, equipment, device, or article that will in the City's opinion at least equally perform the same duties imposed by the general design, considering quality, workmanship, economy of operation, and suitability for the purpose intended, may be considered "equal" and substituted for the material or piece of equipment originally specified. In the event Contractor desires the City to consider an item for substitution, Contractor shall submit a written request, which shall give all pertinent details and comparisons of the substitute with the item specified. The City will notify Contractor in writing of its acceptance or rejection. In all cases, new material shall be used. Contractor shall pay all costs resulting from inspection or testing of materials or equipment proposed for substitution.
41. **LAND AND WATER RESOURCES.** Contractor shall not discharge or permit the discharge, directly or indirectly, of any fuels, oils, calcium chloride, acids, insecticides, herbicides, wastes, toxic or hazardous substances, or other pollutants or harmful materials, onto any lands or into any surface or ground waters, including, but not limited to, streams, lakes, rivers, canals, ditches, or reservoirs. Contractor shall investigate and comply with all applicable federal, state, county, and municipal laws concerning toxic wastes, hazardous substances, and pollution of surface and ground waters. If any waste, toxic or hazardous substance, or other material that can cause pollution, as defined in Section 403.031, F.S., is dumped or spilled in unauthorized areas, Contractor shall notify the City thereof within one (1) workday and thereafter shall remove the material and restore the area to its original condition. If necessary, contaminated ground shall be excavated and disposed of as directed by the City and replaced with suitable fill material, compacted and finished with topsoil, and planted as required to re-establish vegetation. All cleanup and disposal costs shall be borne by Contractor.
42. **LIENS.** Acknowledging that the City's property is not subject to liens, neither final payment nor payment of any part of the retainage shall become due until Contractor delivers to the City releases of all labor and material cost liens arising from Contractor's performance of the Work, including Contractor and any subcontractor(s), and an affidavit by Contractor stating that the releases and receipts include all labor and material costs for which a lien could be filed. If any subcontractor refuses to furnish Contractor a release or a receipt in full, Contractor may furnish to the City a bond satisfactory to the City, indemnifying the City against any such potential lien. If any lien or potential lien remains unsatisfied, the City may discharge the same forthwith and deduct the cost thereof from any amounts due to Contractor. In the event Contractor has been fully paid or the amount of such lien exceeds the amount due to Contractor, Contractor shall refund to the City all monies that the City paid in discharging such lien, including all costs and a reasonable attorney's fee. The discharging of such a lien by the City shall not constitute a waiver of any claims or defenses that Contractor may have against the lienor.
43. **NUISANCE.** Contractor shall exercise every reasonable means to avoid creating or continuing a public or private nuisance resulting from the Work, including, but not limited to: (1) excessive noise associated with radio or other forms of electronic entertainment for persons at the worksite; (2) dust from construction operations, and (3) the uncontrolled flow of surface waters.

44. **PERMITS AND LICENSES; COMPLIANCE WITH LAW.** Contractor shall comply with all applicable federal, state and local laws and regulations, including those pertaining to wages, health and safety. Contractor shall include this requirement in all subcontracts. All materials used and work performed must conform to the laws of the United States, the State of Florida and county and municipal ordinances. Contractor represents and warrants that it is duly licensed to perform the Work in accordance with the laws of the State of Florida and the county or municipality in which the Work is to be performed. For out-of-state contractors, Contractor warrants that it is authorized to do business within the state of Florida and registered with the Secretary of State. Unless otherwise provided in the Statement of Work, the responsibility of the parties for obtaining permits is apportioned as follows:
- (a) The City shall procure all permits required from the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, and the U.S. Army Corps of Engineers.
 - (b) Contractor shall procure any permits required by the county or municipality wherein the Work is located.
 - (c) Contractor shall: (i) give to the proper authorities all required notices relative to the Work; (ii) obtain and pay for all official permits and any professional or other licenses, code stamps, and inspections that are Contractor's responsibility; and (iii) furnish any bonds, security, or deposits required to permit performance of the Work; (iv) until the Work is accepted as substantially complete, comply with all conditions of governmental permits; and (v) resolve any issues resulting from a finding of noncompliance by any governmental agencies, including all costs for delays, litigation, fines, or other costs.
45. **PETROLEUM STORAGE TANKS.** Any petroleum storage tanks with a capacity of 55 gallons or greater that Contractor brings onto City property must be either double-walled or kept within secondary containment that will contain 110% of the tank volume.
46. **PROTECTION OF THE WORK, CITY EQUIPMENT, AND PROPERTY.** Contractor is responsible for the proper care of the Work and protecting the Work from damage until final acceptance by the City, whether or not the same has been covered by partial payments. Contractor is solely responsible for all City-owned equipment in its possession, if any. Contractor shall adequately protect and maintain all passageways, guard fences, lights, and other facilities as required by public authority or local conditions. Contractor shall conduct the Work so as to minimize damage to existing improvements, and shall restore, as nearly as practical, to its original condition, any such improvements damaged by its operations. In the event of temporary suspension of the Work, or during inclement weather, or whenever the City shall direct, Contractor shall carefully protect the Work from damage. If any Work is damaged due to Contractor's failure to so protect the Work, the loss shall be remedied at Contractor's expense. Contractor shall protect public and privately-owned property, structures, utilities, and work of any kind against damage or interruptions of service resulting from its activities. Contractor shall repair, replace, or restore any damage or loss to any public or private property to the City's satisfaction. Should Contractor fail to perform these obligations, the City may make good any such damage and deduct the cost thereof from Contractor's final payment.
47. **PUBLIC ENTITY CRIME.** 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, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on 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 ins. 287.017 F.S., for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.

48. **RELEASE OF INFORMATION.** Contractor shall not publish or release any information related to performance of this Agreement, or prepare, publish, or release any news or press release in any way related to this Agreement, without prior City review and written consent.

49. REMEDIES FOR NON-PERFORMANCE

- (a) **City Remedies.** The remedies enumerated herein are non-exclusive. In addition to the remedies set forth below, the City may avail itself of any statutory and/or common law remedies not set forth herein. In the event of a breach, the City may terminate this Agreement for cause. Alternatively, the City may allow Contractor to correct the deficiency, or may take such action as is necessary to correct such deficiency through City action or that of a third party. Delay or failure by the City to enforce any right or remedy hereunder shall not impair, or be deemed a waiver of, any such right or remedy, or impair the City's rights or remedies for any subsequent breach of this Agreement.
- (b) **Contractor Correction of Deficiencies.** The City shall provide Contractor with written notice of deficiency. At the City's sole judgment and discretion, the City may afford an opportunity to correct said deficiency, in which event the notice shall specify the time allowed to cure. If Contractor disputes that a failure of performance has occurred, Contractor shall, nevertheless, perform the corrective action and may submit a request for a Change Order subject to the dispute resolution procedure. Unless authorized through a Change Order, the Completion Date shall not be extended in order to correct deficiencies. Contractor shall bear the cost of correcting all work of other contractors that is destroyed, damaged, or otherwise negatively impacted by its corrective action. Failure to take timely corrective action may result in termination for cause or the City pursuing alternative remedies, as provided herein.
- (c) **Alternative Remedies to Correct Deficiency.** If the City determines that it is not in its best interest for Contractor to correct incomplete or damaged Work caused by Contractor's failure of performance, the City may pursue any or all of the following remedies, in whole or in part: (1) accept the Work as is and deduct the reasonable value of the deficient Work from the Total Compensation; (2) complete the Work through the utilization of City employees and deduct the cost thereof from the Total Compensation; (3) contract with a third party to complete the deficient Work and deduct the cost thereof from the Total Compensation.
- (d) **City Technical Assistance.** The City may elect to provide technical assistance to Contractor in order to complete satisfactory performance of the Work. If the City is performing a function that Contractor is required to perform, the City may deduct the cost of providing such technical assistance from the Total Compensation. Prior to providing any such technical assistance, the City shall notify Contractor that it considers such assistance to be above and beyond its duties under this Agreement and that it intends to deduct the cost of providing such assistance from the Total Compensation. Contractor shall not be entitled to reject technical assistance when the City determines that such assistance is necessary to complete the Work.

50. **ROYALTIES AND PATENTS.** Contractor certifies that, to the best of its information and belief, the Work does not infringe on any patent rights. Unless provided otherwise herein, Contractor shall: (1) pay all royalties, patent, and license fees necessary for the Work; (2) defend all suits or claims for infringement of any patent rights, and (3) save and hold the City harmless from loss on account thereof; provided, however, that the City shall be responsible for any such losses when the utilization of a particular process or product of a particular manufacturer is specified by the City. If Contractor obtains information that the process or article so specified is a patent infringement, it shall be responsible for such loss unless it promptly so notifies the City.
51. **SAFETY.** For any Work that is to be performed on premises that are owned or controlled by the City (the Premises), Contractor has the sole and exclusive duty for the safety of the premises. Contractor shall provide and maintain sufficient protection for the safety of its employees and other persons who may utilize the Premises, and prevent damage to City property, materials, and equipment. Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ any unfit person or anyone not skilled in the work assigned. Neither Contractor nor its subcontractors shall allow or cause to be allowed any hunting or any weapons, animals, alcohol, or drugs, on or from the Premises or adjacent property. Contractor employees shall not park their vehicles or store equipment or materials adjacent to roads where it may be a hazard to traffic. A clear distance of at least 30 feet from the edge of the pavement or right-of-way shall be kept free of any obstacles unless otherwise authorized by the City. Contractor shall ensure that only authorized personnel are allowed on the worksite and shall post notices warning both employees and the public of all safety hazards created by Contractor.
52. **SUBSTANTIAL COMPLETION; PUNCH LIST.** Contractor shall notify the City in writing when it considers the Work to be substantially complete. "Substantially complete" is the point when the City can beneficially occupy its property and use the Work for its intended purpose, with only minor items remaining in order for the Work to be fully complete. Within thirty (30) days of receipt of such notice, the City shall review the Work and determine whether the Work is substantially complete. If the City agrees that the Work is substantially complete, the City shall, within said 30-day period, develop a list of items ("Punch List") required to render the Work complete, satisfactory, and acceptable in all respects. The Punch List shall be delivered to Contractor not later than five (5) days after it is developed. Contractor shall complete the Punch List items by the Completion Date; provided, however, that if the Completion Date is less than thirty (30) days after the date of delivery of the Punch List, the Completion Date shall be extended to thirty (30) days after delivery of the Punch List. Failure to include any corrective work or pending items not yet completed on the Punch List does not alter Contractor's responsibility to complete all construction services required by the Agreement. Upon completion of all Punch List items, Contractor may request payment of any remaining retainage. If the City disputes the completion of any items on the Punch List, it may withhold 150 percent of the estimated cost of completing any such items and shall return the remainder of the retainage to Contractor. Any disputed matters shall be resolved pursuant to the dispute resolution procedure of this Agreement.
- 53. SURVEYS; PRESERVATION OF MONUMENTS; POINTS AND INSTRUCTIONS**
- (a) **Surveys.** When necessary to performance of the Work, unless otherwise provided in the Statement of Work, the City will furnish horizontal and vertical control necessary to lay out the Work, including horizontal reference point(s) and a vertical control benchmark within 200 feet of the site. The City will set the horizontal reference point(s) and vertical control only at the beginning of the job. Contractor is responsible for interim staking during the job and all staking and layout work not otherwise furnished by the City. Contractor

shall furnish all construction layout of the Work, including layout, centerline, and grade stakes for access roadways. Contractor shall furnish all personnel, equipment, and materials to make such surveys as are necessary to determine the quantity of Work performed. Field notes and computations for estimates shall be verified by the City's Project Manager as to the quantities estimated.

- (b) **Preservation of Monuments.** Contractor shall maintain and preserve all new and existing benchmarks, monuments, markers, reference points, and stakes established by others and/or the City. Should any of the aforesaid be destroyed or damaged by Contractor, the same shall be replaced by Contractor's licensed land surveyor at no cost to the City. Contractor shall be responsible for the cost of any deficiencies in the Work caused by such loss or disturbance.
- (c) **Points and Instructions.** Contractor shall provide reasonable and necessary opportunities and facilities for setting points and making measurements. Contractor shall not proceed until it has made a timely request to the City for, and has received, such points and instructions as may be necessary as the Work progresses. The Work shall be done in strict conformity with such points and instructions.

54. **USE OF COMPLETED PORTIONS OF THE WORK.** The City shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding the fact that the time for completing the entire Work or such portions may not have expired. Such taking of possession and use will not be deemed an acceptance of any Work not completed. If such possession and use increases the cost of or delays the Work, Contractor shall be entitled to a Change Order for extra compensation, or extension of time, as necessary, to offset the effect of such prior possession and use.

55. **WARRANTY**

- (a) Contractor warrants that the Work, workmanship and material furnished by Contractor shall be new and of specified quality, shall conform to the requirements of this Agreement, shall be free from defects, and shall be free from any security interest, lien, or other encumbrances. This warranty shall remain in effect for a period of twelve (12) months after completion of the Work, unless otherwise specified herein. Any defective Work, workmanship, or material corrected during the warranty period shall be similarly warranted for twelve (12) months following its correction or for such other period as specified herein. The express warranty set forth herein shall not be exclusive and shall not act as a limitation upon any statutory or other warranty of any kind, express or implied, including any implied warranty of merchantability or fitness for a particular purpose.
- (b) In the event of breach of this warranty, Contractor shall take the necessary actions to correct the breach in the most expedient manner as dictated by then-existing circumstances. All costs incidental to the repair, replacement, redesign, and testing incurred as a result thereof, including the removal, replacement, and reinstallation of equipment in place when the Work was started, shall be Contractor's responsibility. Upon written notification of a breach, Contractor shall promptly send the necessary personnel to the project site to assume responsibility for corrective action. Time is of the essence. Contractor shall be afforded necessary and reasonable access to perform warranty work. If Contractor fails to promptly correct the breach, the City may take corrective action without waiving any other rights or remedies it may have, and Contractor shall reimburse the City for all expenses reasonably incurred in performing such corrective action.

56. WORK ORDERS

- (a) The City reserves the right to award Work Orders based on the ability to perform in a timely manner, availability of required equipment, cost of required equipment, past performance on similar work, availability of qualified staff, and other factors deemed critical to the performance of each Work Order. The City may, at its sole discretion, request a "not to exceed" cost for any Work Order as a method of determining award. The City makes no guarantees of any amount of work to be awarded under the Agreement. The City reserves the right to directly purchase and provide to Contractor all or part of the equipment or materials to be incorporated in the Work.
- (b) Contractor shall not proceed with any Work prior to the receipt of a written Work Order and shall commence the Work under each Work Order within fourteen (14) days of receipt, unless an alternate date is stated in the Work Order. All Work shall be done to the satisfaction of the City's Project Manager or Work Order Manager and subject to the other terms of this Agreement. The Contractor must agree to the terms of the Work Order. Commencement of Work pursuant to a Work Order constitutes acceptance of all of the terms and conditions of the Work Order. A representative Work Order is attached as **Exhibit C**.
- (c) **Type of Work Order.** When services are needed, the City and Contractor shall agree upon the type of Work Order and the specifics of the Work Order.
- (i) Generally, a time and materials Work Order involves projects where field conditions, environmental or cultural resource preservation issues, subsurface and other physical conditions, or other aspects of the Work cannot be accurately defined. This often results in work being modified in the field by the City. Identification of the Work involved is typically concept level drawings with minimal details. The Work Order will describe the general nature of the Work, including specific deliverables, if applicable, along with the total number of hours, days, or weeks estimated for each task; the materials to be incorporated into the work, and the total authorized expenditure amount. If deliverables are specified and materials, equipment, or sub-contractors are necessary to complete the Work, the Work Order shall specify the estimated costs thereof. The City must approve the hiring of sub-contractors in order to ensure they are qualified to perform the Work and have been competitively procured. The Contractor is compensated for equipment and labor based upon the unit costs of this Agreement, and "Other Direct Costs" as defined in sub-paragraph (d)(iv), below. Invoices must be documented as to the number of hours worked and equipment and materials used sufficient for City audit in accordance with the unit costs of this Agreement and the Work Order. The City reserves the right to determine the means and methods of performing the Work and supplying materials.
- (ii) A fixed-price Work Order is issued when the extent and cost of the Work is agreed upon. It will describe with specificity the location, quantity, work limits, timeframes, deliverables, progress payments (if any), total cost, and any other matters pertaining to the Work. The fixed price includes all applicable permits, bonds, labor, equipment, supplies, project support, overhead and materials necessary to complete the Work. It is used when the scope of work can be clearly determined, such as when detailed design drawings and/or specifications and supporting documents are available and site conditions are known. It may include a detailed schedule of values, construction schedule, and any other necessary documents.

- (iii) A time and materials with not-to-exceed amount Work Order is utilized when a not-to-exceed cost is agreed upon for a time and materials Work Order. All of the terms of a time and materials Work Order apply, subject to the not-to-exceed amount. In addition, the deliverables must be described with the specificity of a fixed price Work Order.
- (d) **Additional Provisions Applicable to Time and Materials and Time and Materials with Not-to-Exceed Work Orders.**
 - (i) **Additional equipment and services.**
 - a. The City may issue a Work Order requiring the use of additional or specialized equipment not identified in the unit costs of the Agreement. The cost of such equipment may be identified separately and included in the specific Work Order to which it applies, or the Agreement may be amended through a Change Order with an amended cost schedule that includes such equipment. If deliverables are specified and sub-contractors are necessary to complete the Work, the Work Order shall specify the costs of the materials, equipment, and sub-contractors.
 - b. After a Work Order is issued, the City may require the use of material, equipment and/or subcontracted services not included in the original Work Order. A Change Order will be issued if the cost exceeds the "not to exceed" amount of the Work Order, or if the additional cost exceeds \$100,000.
 - c. If due to an emergency, the City determines that material, equipment and/or subcontracted services that were not included in the original Work Order are required, the City may authorize procurement thereof in a manner that most efficiently and effectively minimizes public risk and economic loss.
 - (ii) **Equipment substitution.** No provision hereof prohibits substitution of rented or leased equipment for unit cost equipment under the Agreement, or addition of rented or leased equipment not included in the Work Order or cost estimates, provided any such substitution or addition complies with the competitive procurement provisions of this paragraph and has been approved in advance in writing by the City. Should the Work require the use of individual equipment for longer than 30 days or 30 hours per week, the City may compare equipment weekly or monthly rental rates on the open market with the rates in the Cost Schedule and require Contractor to rent the equipment on the open market if the cost is lower than the Cost Schedule. The City will reimburse Contractor this rental cost (with allowable percentage markup in the Cost Schedule) plus the hourly rate for operator with fuel and operation and maintenance.
 - (iii) **Other Direct Costs.**
 - a. Subject to prior written City approval, the City will reimburse Contractor for materials purchased by Contractor and incorporated into the Work,

non-contract equipment, leases/rentals, subcontract work, bonds, and permits obtained by Contractor, including applicable sales tax ("Other Direct Costs"), plus the allowable percentage markup in the Cost Schedule, provided Contractor adheres to the following the competitive procedures:

- Cost is \$2,500.01 - \$15,000-three documented quotes-oral, written, or on line; or a written explanation to City Purchasing Manager and approval from the City's Purchasing Manager for not receiving three quotes.
 - Cost is greater than \$15,000 - at least three written quotes, reviewed and approved by City procurement staff, or a written explanation to and approval from the City's Purchasing Manager for not receiving three quotes.
 - Documentation of solicitations where cost exceeds \$2,500 shall be submitted with the Contractor's cost estimate. If a cost exceeds \$15,000, documentation shall include a complete bidders list and the request for quotes that was sent to each prospective bidder.
- b. Temporary facilities and temporary use materials required for erosion control and dewatering operations may be considered as Other Direct Costs upon approval by the City.
- c. Only equipment or materials that are incorporated into the Work and contracted services directly related to the Work qualify for compensation as Other Direct Costs. Compensation shall not be provided for any other costs associated with the Work not identified on the Cost Schedule or Work Order.
- (iv) The City reserves the right to reject any proposed subcontractors.
- (e) **Invoicing.** In addition to the general provisions in **PAYMENT OF INVOICES**, supporting documentation shall include:
- (i) **Time and Material Work Orders:** (hourly billing for labor and/or equipment and materials):
- a. Name of employee and/or type of equipment
 - b. Employee position title/job classification (if applicable)
 - c. Hours worked and/or equipment utilized on a daily basis, as documented by Contractor's Daily Record of Hours, signed by Contractor and City staff(attached hereto as revised by the City from time to time).
 - d. The approved charge rate for each classification of Contractor employee and/or equipment included in Cost Schedule, Attachment ____, and/or the Work Order authorizing the Work. In the absence of an individual rate in the Cost Schedule, the Contractor employee's general classification rate may be utilized.
 - e. If billed for use of equipment not in the Cost Schedule, documentation of prior authorization for equipment used, including cost and estimated quantities.
 - f. Documentation of any required competitive procurement for equipment, subcontractors, or materials.

- g. Contractor's notarized affidavit shall be provided with the first invoice for those Work Orders not requiring a Payment Bond, stating that payment of subcontractors and materialmen shall be made pursuant to Section 218.735, F.S.
 - h. Proof of payment of subcontractors and materialmen for which Contractor has already received payment from the City. Proof may be in the form of (1) a cancelled check; (2) a receipt marked paid by subcontractor or materialman; (3) a waiver of claim executed by the subcontractor or materialman; (4) Contractor's sworn affidavit that all subcontractors and materialmen for which payment has been received from the City have been paid by the Contractor; or (5) any other form that has been pre-approved in writing by the City. For the final invoice purposes, proof of payment must be submitted not only as to amounts previously paid by the City, but also as to amounts included in the final invoice.
 - i. A copy of the original vendor invoice(s) for Other Direct Costs. Altered or amended vendor invoices shall be rejected. If a vendor's invoice is from a supplier other than the one providing the lowest quote, Contractor shall explain the reason for not using the lowest cost supplier. The City reserves the right to reduce the amount reimbursed if a competitive market analysis clearly demonstrates that the invoice exceeds market value. In no event shall Contractor charge the City for any subcontractor's work that exceeds the approved Cost Schedule.
 - j. Diversity Statement. If W/MBE subcontractors or suppliers are used, provide company names and amount spent with each. If no W/MBE subcontractors or suppliers are used, so indicate.
 - k. Contractor may provide a detailed invoice with supporting information, or alternatively, may provide a summary invoice with the information provided from Contractor's payroll or other records as supporting backup material.
- ii. **Fixed Price Work Orders:**
- a. Description of the Work that has been completed in accordance with the progress/payment schedule of the Statement of Work for the Work Order.
 - b. Certification that the Work for which payment is requested has been completed in accordance with the Statement of Work for the Work Order, in a format approved by the City Project Manager.
 - c. Proof of payment of subcontractors and materialmen as described above for Type 1 Work Orders.
 - d. Diversity Statement. If W/MBE subcontractors or suppliers are used, provide company names and amount spent with each. If no W/MBE subcontractors or suppliers are used, so indicate.
- iii. **Time and Materials with Not-to-Exceed Work Orders:**
- a. Description and certification of completion of the work as described above for Fixed Price Work Orders.
 - b. Hourly billing information for Time and Materials Work Orders, as described above.
 - c. Proof of payment of subcontractors and materialmen as described above for Time and Materials Work Orders.

57. **WORK SCHEDULE.** As per General Conditions.
58. **CONTRACT INTERPRETATION.** In the event of a conflict between the terms of this Agreement and the General Conditions, the term of the General Conditions shall prevail.
59. **ENTIRE AGREEMENT.** The terms of this Agreement supersede any and all prior or contemporaneous understandings, agreements and representations and constitute the final and complete understandings of the parties.

**ADDITIONAL PROVISIONS
(In Alphabetical Order)**

DEFINITIONS

ADDENDA: Written or graphic instruments issued prior to the opening of Bids which make additions, deletions, or revisions to the solicitation or contract documents.

AGREEMENT: The written contract between the City and Contractor covering the Work, which includes all documents attached to this Agreement or incorporated herein by reference. The words "contract" and "Agreement" are synonymous in these documents.

AMENDMENT: Any written change made to the terms and conditions of the Agreement.

BID: The written offer of Respondent (when submitted on the reproduced approved forms) to perform the Work and furnish the necessary materials in accordance with the provisions of this Agreement.

BID BOND: The security furnished with a Bid to guarantee that Respondent will enter into a contract and execute, deliver, and perform all other obligations described in the Invitation for Bids if Contractor receives a Notice of Intent to Award the contract from the City.

CHANGE ORDER: A written agreement of the parties after the Commencement Date to amend this Agreement so as to modify the Scope of Work or the Total Compensation or provide for an extension of time.

COMMENCEMENT DATE: The date upon which the Work is authorized to proceed.

COMPLETION DATE: The date by which the Work is required to be completed.

CONTRACTOR: Contractor, its officers, employees, agents, successors, and assigns.

CONTRACTOR'S PROJECT MANAGER: The individual designated by the Contractor to be responsible for overall coordination, oversight, and management of the Work for Contractor.

CONTRACTOR'S SUPERINTENDENT: Contractor's representative who is present during the progress of the Work and authorized to receive and fulfill instructions from the Contractor's Project Manager or the City.

CPM or CRITICAL PATH METHOD: The use of calculated task duration with no regard for probabilities. A path has no float and is the longest path through the project. A critical path encompasses those project activities that are crucial and cannot be shifted, having calculated task duration. They are the important activities driving the project. Float belongs to the City.

DAY: Each day shown on the calendar.

DELIVERABLES: All Work that is to be performed pursuant to the Scope of Work, in whole or in part, including, but not limited to, all equipment or materials that are incorporated within the Work.

CITY: The City of St. Augustine, its Commission, officers, agents, and employees.

CITY'S PROJECT MANAGER: The City employee designated by the City to be responsible for overall coordination, oversight, and management of the Work for the City.

CITY'S SUPPLEMENTAL INSTRUCTION: Instructions issued by the City's Project Manager to make minor changes in the Work not affecting the Total Compensation or the Completion Date, and consistent with the purpose of the Work.

FINAL RELEASE OF LIENS: The instrument that is to be signed by Contractor and submitted to the City upon completion of the Work showing that all bills from subcontractors have been paid.

INSPECTOR: The City's Project Manager or an authorized representative of the City who is assigned to inspect the Work.

PERFORMANCE AND PAYMENT BOND: The security furnished by Contractor and surety in either the form provided or in a form approved by the City as a guarantee that Contractor will perform all of its contractual obligations in accordance with the terms of the Agreement and pay in full all bills and accounts for material, labor, services, and supplies used directly or indirectly in the performing the Work.

PERSON: Any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or capacity, whether appointed by a court or others, and any combination of individuals.

PRINCIPAL: When used in a Bid, Performance and Payment Bond, the word "principal" means the same as the word "Contractor."

REQUEST FOR BIDS: An advertised solicitation for sealed competitive Bids, with the title, date, and hour of the public opening designated. It includes a detailed description of the goods and/or services sought, the date for submittal of Bids, and all contractual terms and conditions.

RESPONDENT: Any person who submits a Bid in response to a Request for Bids or a proposal in response to a Request for Proposals.

SCOPE OF WORK: The City's written directions, requirements and technical specifications for completing the Work. Standards for specifying materials or testing that are incorporated therein by reference shall have the same force and effect as if fully set forth therein.

SUBCONTRACTORS: Those persons having a direct contract with Contractor relating to performance of the Work, including one who furnishes material worked into a special design in accordance with the plans or specifications of the Work, but not including one who merely furnishes material.

SURETY: The entity bound by a bond to be liable for Contractor's satisfactory performance of the Work and payment of all debts pertaining thereto.

TOTAL BID: The total cost to be paid to Contractor for completion of the Work.

TOTAL COMPENSATION: The total funds to be expended pursuant to this Agreement upon satisfactory completion of the Work.

WORK: All labor, materials, equipment, transportation, supporting documentation, and other products, services, or facilities necessary for complete performance of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate, each of which shall be deemed an original on the day and year first above written.

CITY OF ST. AUGUSTINE,
FLORIDA a municipal corporation

ATTEST:

Name: Darlene Galambos
Darlene Galambos, City Clerk

(SEAL):



Signed, sealed and delivered
in the presence of:

Melissa Kimball
Witness

Printed Name: Melissa Kimball

'&JJI WC
itness

Printed Name: .) jSl(p Y'vwvA\ -t.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Isabelle C. Lopez
Isabelle C. Lopez, City Attorney

- Exhibit A: Scope of Work/Technical Specifications
- Exhibit B: Insurance Requirements
- Exhibit C: Work Order Authorization (sample)
- Exhibit D: Unit Price Schedule
- Attachment 11 - Requirements for 2 CFR Part 200 Appendix F
- Attachment 12 - Requirement for HUD 24 CFR 85.36
- Attachment 13 - Additional Requirements
- Attachment 14 - David-Bacon Wage Decisions
- Attachment 15 - COSA As-Built Requirements
- Attachment 16 - Electronic Drawing File Standards

By: +d, 7' (

Printed Name: - Meteditl: b Breidenstein

Title: Assistant City Manager

Date: 1/11/20

ENGINEERED SPRAY SOLUTIONS LLC

By: [Signature]

Printed Name: £ M& -5 C.e.r

Title: 5' (lid G, prex Ptre

Date: 10/11/20

EXHIBIT D - UNIT PRICE SCHEDULE

Item No.	Description	Unit	Unit Price
A. MANHOLE & STRUCTURES REPAIR			
1	Manhole Protective Resin Based Lining 48" Diameter 1/8" Minimum Thickness	VF	\$328.00
2	Manhole Structural Resin Based Lining 48" Diameter 1/4" Minimum Thickness	VF	\$376.00
3	Manhole Structural Resin Based Lining 48" Diameter 1/2" Minimum Thickness	VF	\$521.00
4	Manhole Structural Resin Based Lining 48" Diameter 1" Minimum Thickness	VF	\$811.00
5	Manhole Protective Resin Based Lining 60" Diameter 1/8" Minimum Thickness	VF	\$410.00
6	Manhole Structural Resin Based Lining 60" Diameter 1/4" Minimum Thickness	VF	\$470.00
7	Manhole Structural Resin Based Lining 60" Diameter 1/2" Minimum Thickness	VF	\$651.25
8	Manhole Structural Resin Based Lining 60" Diameter 1" Minimum Thickness	VF	\$1,013.75
9	Structure / Manhole Protective Resin Based Lining 1/8" Minimum Thickness	SF	\$26.50
10	Structure / Manhole Structural Resin Based Lining 1/4" Minimum Thickness	SF	\$31.00
11	Structure/ Manhole Structural Resin Based Lining 1/2" Minimum Thickness	SF	\$42.00
12	Structure/ Manhole Structural Resin Based Lining 1" Minimum Thickness	SF	\$65.00
j. MANHOLE & STRUCTURES REPAIR			
13	Removal of Existing Manhole or Wetwell Lining System (Excluding T-Lock Eooxv or Polvurea Liners)	SF	\$9.00
14	Removal of Existing Manhole or Wetwell T-Lock, Epoxy or Polyurea Liners	5F	\$22.00
15	Patching & Profiling - Cementitious Grout Only	SF	\$12.00
16	Infiltration Control - Chemical Grout	GAL	\$125.00
17	Surface Preparation - Sand Blasting	SF	\$10.00
18	Bench and Invert Channel Repair	LF	\$225.00
19	Chimney Repairs	VF	\$225.00
20	Chimney Replacement	VF	\$675.00
21	Chimney sealing (Construction Joint at Ring and Cover)	EA	\$285.00
22	Manhole Rim & Cover Replacement (STD 24" Diameter) - Paved Areas	EA	\$1,150.00
23	Manhole Rim & Cover Replacement (STD 24" Diameter) - Grassed Areas	EA	\$950.00
24	Manhole Rim & Cover Replacement (3PC COSA DETAIL 551)- Paved Areas	EA	\$1,550.00
25	Manhole Rim & Cover Replacement (3PC COSA DETAIL 551)- Grassed Areas	EA	\$1,250.00
26	Raise / Re-Level Existing Frame and Cover for Street Adjustment (up to 4")	EA	\$600.00
27	Provide and Install Manhole Cover lid & Pick Hole seals	EA	\$275.00
28	Install Rain Water Protector STD 24" Stainless	EA	\$365.00
29	Install Rain Water Protector Large 31.5" Stainless	EA	\$485.00
30	Install Rain Water Protector STD 24" HDPE	EA	\$135.00

31	Install Rain Water Protector Large 31.5" HOPE	EA	\$190.00
C: CLEANING, TELEVISIONING AND ASSESSMENT			
32	Cleaning Manholes for Rehabilitation	EA	\$150.00
33	Cleaning Structures for Rehabilitation	EA	\$1,000.00
34	Pre and Post Photographs(USB) Manholes for Rehabilitation	EA	\$150.00
35	Pre and Post Photographs(USB) Structures for Rehabilitation	EA	\$300.00
36	Mobilization (Inspection only)	WK	\$1,500.00
37	Manhole Inspection Level 1	EA	\$125.00
38	Manhole Inspection Level 2	EA	\$185.00
39	Structure (Wet Well) Inspection Level 1	EA	\$1,300.00
40	Structure (Wet Well) Inspection Level 2 (Includes scan)	EA	\$1,750.00
41	Cleaning Sewer Manholes (CCTV purposes only)	EA	\$45.00
42	Cleaning Stormwater Structures (CCTV purposes only)	EA	\$65.00
43	Cleaning Wetwells (CCTV/ Inspection purposes only)	EA	\$600.00
44	Light Storm Drain Cleaning From ROW (Right of way) 8"-10"	LF	\$4.75
45	Light Storm Drain Cleaning From ROW (Right of way) 12"-15"	LF	\$8.25
46	Light Storm Drain Cleaning From ROW (Right of way) 16"-24"	LF	\$12.25
47	Light Storm Drain Cleaning From ROW (Right of way) 30"-36"	LF	\$29.00
48	Light Storm Drain Cleaning From Side and Rear Easements 8"-10"	LF	\$9.40
49	Light Storm Drain Cleaning From Side and Rear Easements 12"-15"	LF	\$16.40
50	Light Storm Drain Cleaning From Side and Rear Easements 16"-24"	LF	\$24.75
51	Light Storm Drain Cleaning From Side and Rear Easements 30"-36"	LF	\$58.50
52	Increase for "Medium" cleaning of storm drain to above line items 44-51	LF	\$1.75
53	Increase for "Heavy" cleaning of storm drain to above line items 44-51	LF	\$3.50
54	Storm Drain CCTV 8" - 10"	LF	\$3.75
55	Storm Drain CCTV 12" - 18"	LF	\$3.75
56	Storm Drain CCTV 18 - 24"	LF	\$3.75
57	Storm Drain CCTV 24" - 30"	LF	\$3.75
58	Storm Drain CCTV 30" - 42"	LF	\$3.75
59	Storm Drain CCTV 42" - 54"	LF	\$3.75
60	Storm Drain CCTV 54" - 66"	LF	\$3.75
61	Box Culvert Top Scan	LF	\$10.50
62	Box Culvert Bottom Debris Mapping scan	LF	\$5.50
63	CCTV Sanitary pipe inspection - includes light cleaning 8"-10" Diameter	LF	\$3.00
64	CCTV Sanitary pipe inspection - includes light cleaning 12"-15" Diameter	LF	\$3.25
65	CCTV Sanitary pipe inspection - includes light cleaning 16"-24" Diameter	LF	\$6.50
66	Dye Testing of Sewer	EA	\$850.00
67	Dye Flooding of Sewer	EA	\$1,250.00
68	Wastewater Flow Monitoring Equipment Rental and Installation in existing Structures	EA	\$2,750.00
69	Wastewater Flow Monitoring Monitoring and Maintenance	EA/ Month	\$650.00

70	Rainfall Monitoring Equipment Rental and Installation in existing Structures	EA	\$850.00
71	Rainfall Monitoring Monitoring and Maintenance	EA/ Month	\$300.00
72	Line cleaning / Jetting for Sanitary	LF	\$3.25
73	Increase for "Medium" cleaning of sanitary sewer line, ADD to above line item 72	LF	\$1.25
74	Increase for "Heavy" cleaning of sanitary sewer line, ADD to above line item 72	LF	\$2.50
75	GPS Mapping of Requested Manholes	EA	\$150,00
ADJUNCTORY SERVICES			
76	Plug Rental 6" - 10"	DAY	\$125.00
77	Plug Rental 10" - 16"	DAY	\$150.00
78	Plug Rental 16" - 24"	DAY	\$200.00
79	Plug Rental 24" - 36"	DAY	\$250.00
80	Bypass Pumper Truck	HOUR	\$325.00
81	Bypass Vac-Truck	HOUR	\$325.00
82	Maintenance of Traffic (MOT) -Arterial (single lane closure)	EA	\$1,250.00
83	Maintenance of Traffic (MOT) - FDOT (single lane closure)	EA	\$1,500.00
84	Maintenance of Traffic (MOT) - Neighborhood (Simple MOT including Flagmen)	EA	\$600.00
85	Mobilization Standard (per Crew)	WK	\$2,450.00
86	Mobilization Emergency (per crew)	EA	\$3,750.00
87	Meals/Hotel/Lodging (per crew)	DAY	\$600.00
COST OF INVOICE PLUS, OH/P ON MISCELLANEOUS SERVICES. City to authorize. 10% of these items			
88	Bypass Pumping Services		150% OH/P
89	Maintenance of Traffic CUSTOM INDEX		150% OH/P
90	Bypassing Plug (HAVE TO ORDER)		150% OH/P
91	Miscellaneous/ Unexpected Materials or Services		150% OH/P
92	Extra / Miscellaneous		150% OH/P
93	Extra / Miscellaneous		150% OH/P
BOND AMOUNT			
94	Bond amount calculated at 3% of total bid Price 1	3%	

CONFORMED 09-16-2020