

# CONSTRUCTION AGREEMENT

**THIS AGREEMENT** is by and between City of Lake City (hereinafter called OWNER) and ANDERSON COLUMBIA CO., INC. (hereinafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

## ARTICLE 1 - WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents, as defined in Article 9 herein. The Work is generally described as follows:

**Resurfacing Patterson Avenue from US 90 to SR 100A.**

## ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**Milling and resurfacing of NE Patterson Avenue from W Duval Street to CR 100A. Items of work include, but are not limited to milling, asphalt paving, grassing, signs and pavement markings. Also included is the reconstruction of NE Simms Dr (bid option A).**

## ARTICLE 3 - ENGINEER

3.01 The ENGINEER on the project shall also be the Project Manager. The ENGINEER will act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. OWNER'S Consultant, who designed the project, is North Florida Professional Services 1450 SW State Road 47 Lake City, FL 32025.

## ARTICLE 4 - CONTRACT TIMES

### 4.01 *Time of the Essence*

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- A. The Work (construction) will commence within 14 days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the Standard General Conditions of the Construction Contract.
- B. Total contract time shall not exceed 63 calendar days

### 4.02 *Liquidated Damages*

Liquidated damages will be assessed to the contractor as follows:

1. The amount of \$1,000.00 for the first substantiated MOT deficiency
2. The amount of \$5,000 for the second substantiated MOT deficiency.
3. The amount of \$10,000 per MOT deficiency for each substantiated MOT deficiency following the second deficiency.

4. The amount of \$500.00 per day for each day over the contract time.

## **ARTICLE 5 - CONTRACT PRICE**

- 5.01 OWNER shall pay CONTRACTOR for all work at the prices stated in CONTRACTOR's bid, for a total contract amount not to exceed **Five Hundred Forty-Three Thousand Ninety Nine Dollars and Five Cents (\$543,099.05)**

## **ARTICLE 6 - PAYMENT PROCEDURES**

### 6.01 *Submittal and Processing of Payments*

CONTRACTOR shall submit to ENGINEER a detailed payment application based on items shown on bid form. The CONTRACTOR shall sign and submit the detailed application for payment in accordance with Article 14 of the Standard General Conditions of the Construction Contract. The detailed application for payment will be processed by ENGINEER as provided in the Standard General Conditions of the Construction Contract.

### 6.02 *Progress Payments; Retainage*

- A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's payment application on monthly basis during performance of the Work, less such amounts as ENGINEER shall determine, in accordance with paragraph 14.02.B.5 of the Standard General Conditions of the Construction Contract and less 100% of ENGINEER's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion as described in Section 14.04, Standard General Conditions of the Construction Contract. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the Standard General Conditions of the Construction Contract (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements, Part IV, Technical Specifications, Bidding and Construction Contract Documents for the Project.
- B. The Owner shall withhold, from each progress payment made to the contract, 10% as retainage. Retainage will be released (paid) to the CONTRACTOR when the project is completed and has been accepted by the ENGINEER.

### 6.03 *Final Payment*

Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the Standard General Conditions of the Construction Contract, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

### 6.04 *Payment*

All payments for the Work shall be made in accordance with the "Local Government Prompt Payment Act", Sections 218.70, et seq., Florida Statutes.

## **Article 7 - INTEREST**

- 7.01 All moneys not paid when due as provided in Article 14 of the Standard General Conditions of the Construction Contract shall bear interest at the rate of 0% per annum.

## **Article 8 - CONTRACTOR'S REPRESENTATIONS**

- 8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:
- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. CONTRACTOR has examined and carefully studied the requirements of the Local Small Business Procurement Program.
  - C. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
  - D. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - E. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the Standard General Conditions of the Construction Contract and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the Standard General Conditions of the Construction Contract.
  - F. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.
  - G. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
  - H. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in all the Contract Documents.
  - I. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in all the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with all the Contract Documents.
  - J. CONTRACTOR has given Issuing Office written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by Issuing Office is acceptable to CONTRACTOR.
  - K. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **Article 9 - CONTRACT DOCUMENTS**

9.01 *Contents*

- A. The Contract Documents consist of the following:
1. This Agreement
  2. Construction Performance Bond
  3. Construction Documents for Patterson Avenue (L211104CLC) specifically including:
    - a. Standard General Conditions of the Construction Contract
    - b. Bid Solicitation Package
    - c. Anderson Columbia Co., Inc. Bid Package
    - d. Technical Specifications (not attached to but incorporated herein by reference)
    - e. Construction Drawings (not attached to but incorporated herein by reference)
    - f. Addenda (not attached to but incorporated herein by reference)
    - g. Supplementary Conditions (Not Applicable)
  4. Exhibits to this Agreement (enumerated as follows):
    - a. Notice to Proceed; (Exhibit A);
  5. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Written Amendments;
    - b. Field Order(s)
    - c. Work Change Directive(s);
    - d. Change Order(s).
- B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above) and are incorporated herein by reference.
- C. There are no Contract Documents other than those listed above in this Article 9 and this agreement.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04 of the Standard General Conditions of the Construction Contract.

9.02 *Precedence.*

- A. In the event of conflict or inconsistency among or between the Contract Documents, the order of precedence (in descending order) is as follows: Written Amendments, Change Orders, Work Change Directives, Field Orders, this Agreement, Special Conditions, Supplementary Conditions, Standard General Conditions, Technical Specifications, Construction Drawings and CONTRACTOR's Bid.

## **Article 10 - MISCELLANEOUS**

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the Standard General Conditions of the Construction Contract, the Supplementary Conditions and the Special Conditions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under all the Contract Documents.

10.03 *Successors and Assigns*

- A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in all the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Indemnification*

- A. The Contractor shall indemnify, defend, and hold harmless the OWNER, its officers, agents, and employees, from 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 and other persons employed or utilized by the Contractor in the performance of the work.

10.06 *Other Provisions*

- A. Nothing in the Contract Documents shall be interpreted or construed as a waiver of OWNER's sovereign immunity, except to the extent provided by and in accordance with Section 768.28, Florida Statutes.

10.07 *Records/Audit*

- A. The Contractor shall maintain records sufficient to document their completion of the scope of services established by this Agreement. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the City. These records shall be kept for a minimum of six (6) years after completion of the Contract. Records which relate to any litigation, appeals or settlements of claims arising from performance under this Order shall be made available until a final disposition has been made of such litigation, appeals, or claims.

10.08 *E-Verify Requirement*

The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

Contractor must enroll and participate in the E-Verify Program within thirty days of the Contract and provide the City a copy of the "Edit Company Profile" screen indicating enrollment in the E-Verify Program and make such record(s) available upon request. Failure to comply is a material breach of this Contract.

10.09 *Insurance.*

The Contractor shall maintain such insurance as will protect the Owner from any or all claims for property damage, personal injury and bodily injury, including death, which may arise from operations under this contract, in the minimum amount of \$1,000,000.00 per occurrence. Certificates of such insurance shall be filed with the Owner prior to commencement of any work under this contract, and shall be subject to Owner's own approval

for adequacy of protection, and shall name the Owner as an additional insured under any such policy or policies. All required insurance shall also provide Owner with at least 30 days advance notice of cancellation, non-renewal, or adverse change.

10.10 *Public Records, Florida Statutes section 119.0701.*

1. In addition to all other provisions provided in this contract, the Contractor shall also comply with the requirements of Florida Statutes section 119.0701 regarding public records. Specifically, the Contractor shall:
  - A. Keep and maintain public records required by Owner as a public agency to perform the service.
  - B. Upon request from the public agency's custodian of public records, provide the public agency 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 this Chapter or as otherwise provided by law.
  - C. 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 public agency.
  - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency 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 public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

Contractor, for itself and any Subcontractor, agrees to comply with Florida Statutes section 119.0701 in all respects during the term of this agreement.

2. *Request for Records; Non-Compliance:*
  - A. A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Contractor of the request, and the Contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
  - B. If the Contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
  - C. If the Contractor fails to provide the public records to the public agency within a reasonable time it may be subject to penalties under section 119.10.

3. *Civil Action:*

If a civil action is filed against the Contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorney fees, if:

- A. The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and
- B. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the public agency and to the Contractor.
- C. A notice complies with the above item if it is sent to the public agency's custodian of public records and to the Contractor at the Contractor's address listed on this contract with the public agency or to the Contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
- D. A Contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT MR. PAUL DYAL CITY MANAGER, AS CUSTODIAN OF THESE PUBLIC RECORDS AT TELEPHONE NUMBER 386-752-2031, E-MAIL DYALP@LCFLA.COM 205 N. MARION AVE. LAKE CITY, FL 32055.

**[The Remainder of This Page Intentionally Left Blank]**

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on \_\_\_\_\_, 2023 (which is the Effective Date of the Agreement.)

OWNER: City of Lake City

CONTRACTOR: Anderson Columbia Co., Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: E.Tony Williams, Jr., Vice President

[Corporate Seal]

[Corporate Seal]

Witness: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for giving notices:

Anderson Columbia Co., Inc.

871 NW Guerdon Street

Lake City, FL 32054

(If OWNER is a corporation, attach evidence of authority to sign. If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of OWNER-CONTRACTOR Agreement.)

Licenses No. CG C060909

(Where applicable)

Agent for service of process:

\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_