

AGREEMENT

THIS IS AN AGREEMENT, dated the ___ day of _____, 2025, between:

CITY OF PAHOKEE, a Florida municipal corporation,
hereinafter "CITY,"

and

C.A.P. Engineering, Inc. (CAP), a company, authorized to do
business in the State of Florida, hereinafter "CONSULTANT."

THIS AGREEMENT is dated and will be effective on the _____ day of January in the year 2025, by and between the City of Pahokee, (hereinafter called CITY) and, C.A.P. Engineering, Inc. (CAP), (hereinafter called CONSULTANT).

WHEREAS, the parties desire to enter into this emergency agreement for Construction Engineering and Inspection (CEI) Services in connection with the Barfield Highway Reconstruction project -- FDOT Financial Project No. 442030-1-54-01.

CITY and CONSULTANT, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

Scope of Services

Task 1 - Construction Management Phase – Continue project construction management services from previous CEI.

- a. Contract Administration: Review and assess all previously submitted contract documents to date, such as permits, plans and revisions, engineering reports, shop drawings, change orders, RFI's, payment application, time extensions, coordination with FDOT and FDOH and prepare reports and certifications as required.

Task 2 - Construction Phase: Document Construction Contractor's activities and verify quantities for payment.

- a. Monitoring: Onsite inspections may vary based on actual construction activities. Monthly review of construction progress.
- b. Project Meetings: Attend project construction progress meetings, as needed with appropriate team members in attendance.
- c. Review and Process Contractor's Applications for Payment: Receive and review

draft application for payment prepared by the Contractor, reconcile any discrepancies between Engineer's estimate of progress and Contractor's application. Review draft application for payment in comparison to measured or estimated quantities. Make notations of deficient work not recommended for payment until corrected. Return a copy of the reviewed draft to the Contractor. Review revised application for payment and, if appropriate, advise the Contractor to submit the required number of copies. Forward copies to the City's Project Manager for processing.

Task 3 - Closeout Phase

- a. Substantial Completion: Receive and review Contractor's required substantial completion submittal and determine if Project is ready for substantial completion inspection.
- b. Conduct Substantial Completion Inspection: Coordinate, conduct, and document the substantial completion inspection. Prepare and distribute the punch list format to the parties conducting the inspection. Review progress of corrective action on punch list items, periodically updates, and re-issue. Prepare and issue Certificate of Substantial Completion with a list of stated qualifications (punch list).
- c. Final As-Built Record Drawing Review: Review as-built drawings to verify that the Contract Drawings are properly noted to reflect actual construction; notify the Contractor of deficiencies noted; provide follow up to verify if corrections were made and that the as-built drawings are up to date.
- d. Final Completion: Receive and review the Contractor 's required final completion submittal. Notify City Project Manager, Contractor, and other affected parties of date of final inspection. Coordinate, attend and conduct the final inspection meeting and physical walk-through of the Project.
- e. Final Payment: Collect all payment documents required and forward to the City Project Manager for processing along with the Contractor's Final Application and Certificate for Payment; finalize all project costs and determine the final adjusted amounts for construction; obtain the Contractor's signature on any required Contractor's Certification of Affidavits; process and sign Final Application for Payment; prepare transmittal letter indicating recommendation for Final Payment.

ARTICLE 4 - CONTRACT PRICE

4.1 CITY shall pay CONSULTANT for completion of the Work in accordance with the payment schedule set forth below:

Fee Schedule:

| <u>Position</u> | <u>Hourly Rate</u> |
|---------------------------------|--------------------|
| Principal | \$285 |
| Project Manager | \$250 |
| CEI Senior Project Engineer | \$215 |
| CEI Project Engineer | \$150 |
| CEI Inspector | \$100 |
| CEI Contract Support Specialist | \$106 |

Reasonable reimbursable expenses such as travel costs shall be invoiced monthly and at direct cost.

The fee for all services will be based on the Fee Schedule listed above. The total fee to be paid to CONTRACTOR for services shall not exceed Fifty Thousand Dollars (\$50,000.00).

ARTICLE 5 - PAYMENT PROCEDURES

CONSULTANT shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by CITY as provided in the General Conditions.

5.1. PAYMENTS. CONSULTANT shall submit for payment for the services rendered under this Agreement in accordance with Article 4. The Consultant shall maintain detailed records of the time spent, which shall be provided to the Client upon request. Invoices will be submitted monthly, and payment will be due within [30] days of receipt.

5.2. FINAL PAYMENT. Upon final completion and acceptance of the Work in accordance with Exhibit "A".

5.3 AVAILABILITY OF FUNDS. CITY's performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the City Commission.

ARTICLE 6

(This Article left blank intentionally).

ARTICLE 7 - CONSULTANT'S REPRESENTATIONS

In order to induce CITY to enter into this Agreement CONSULTANT makes the following representations:

7.1 CONSULTANT has familiarized itself with the nature and extent of the

Construction Contract Documents, Work, site, locality, and all local conditions, Laws, and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.

7.2. CONSULTANT has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies, if any, which pertain to the subsurface of physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as CONSULTANT considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONSULTANT for such purposes.

7.3. CONSULTANT has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all examinations, investigations, explorations, tests, reports and studies, if any, which pertain to the physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONSULTANT considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONSULTANT for such purposes.

7.4. CONSULTANT has given CITY written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by CITY is acceptable to CONSULTANT.

7.5 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire Agreement between CITY and CONSULTANT concerning the Work, consist of the following:

8.1 This Agreement.

8.2 ~~Performance Bond and Payment Bond (plus Power of Attorney Forms as applicable).~~

8.3 ~~Notice of Award by City Commission~~

8.4 ~~General Conditions and Supplementary Conditions.~~

8.5 If applicable, Florida Department of Transportation Standard Specifications for

Road and Bridge Construction, latest edition and Florida Department of Transportation Design Standards, latest edition (not attached).

8.6 Paragraph Deleted

8.7 Drawings attached hereto and/or referenced in the List of Drawings (which may or may not be attached hereto).

8.8 Addenda Exhibit "A", Exhibit "B" and Exhibit "C", inclusive.

8.9 ~~CONSULTANT'S Bid and Bid Bond.~~

8.10 ~~Any other documents required by this Agreement, the Bidding Documents or the Contract Documents whether or not the same is attached hereto.~~

8.11 ~~The following which may be delivered or issued after the Effective Date of the Agreement may not be attached hereto: Notice to Proceed, Warranty of Title form, Final Release of Liens form, all written amendments and other documents amending, modifying, or supplementing the Contract Documents.~~

8.12 Relevant provisions of the Agreement between the City of Pahokee and the Florida Department of Transportation, G-1763 related to Barfield Highway entered in on April 1, 2019.

8.13 The documents listed under Article 8 above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in this Agreement.

ARTICLE 9 - MISCELLANEOUS

9.1 Terms used in this Agreement, which are defined in Article 1 of the General Conditions, will have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents 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 the Contract Documents.

9.3 CITY and CONSULTANT each binds itself, its partners, successors, assigns and

legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained on the Contract Documents.

9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be stricken, and all remaining provisions shall continue to be valid and binding upon CITY and CONSULTANT, 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. Failure of either party to enforce or exercise any right(s) under the Contract Documents shall not be deemed a waiver of either party's right to enforce said right(s) at any time thereafter.

9.5 The CONSULTANT agrees to be bound by all the terms and conditions set forth in the Contract Documents. To the extent that a conflict exists between this Agreement and the remaining Contract Documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail. To the extent that a conflict exists between the remaining Contract Documents, the terms, conditions, covenants, and/or provisions of the Contract Documents shall prevail in the following order of precedence:

1. Any written Amendments;
2. Technical Specifications, Drawings, and Addenda thereto;
3. Supplemental Conditions;
4. General Conditions;
5. CONSULTANT's Bid; and
6. All remaining Contract Documents (which shall have equal value in order of precedence).

9.6 This Agreement shall not become binding and effective until approved by the City Commission of the City of Pahokee or its designated representative.

9.7 In accordance with Palm Beach County Ordinance number 2011-009, the CONSULTANT understands that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed Palm Beach County ordinance 2011-009 and is aware of its rights and/or obligations under such ordinance.

9.8 The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

9.9 The CONSULTANT warrants and represents that all of its employees are treated equally during employment and the provision of all of its services is without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

9.10 The Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

9.11 CONSULTANT shall comply with Florida's Public Records Laws, and specifically agrees to:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service.
- b) Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, 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.
- d) Meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the CONSULTANT upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

9.12 Governing Law; Consent to Jurisdiction: The Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions, and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for federal actions, the purposes of any suit, action or other proceeding arising out of, or relating to, the Agreement; and, (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever.

9.13 Except where specifically provided for in the Agreement, the CONSULTANT shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from the CITY for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising out of or related to delay, disruption, interference or hindrance from any cause

whatsoever. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery of damages by the CONSULTANT for hindrances or delays due solely to fraud, bad faith or active interference on the part of the CITY. Otherwise, the CONSULTANT shall be entitled only to extensions of the Contract Times as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided in the Agreement.

9.14 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the CONSULTANT or its sub-CONSULTANTS under the Contract Documents shall be considered a "Work for Hire" and the exclusive property of the CITY. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, the CONSULTANT and its sub-CONSULTANTS will assign to the CITY all right, title and interest in and to CONSULTANT's and/or its sub-CONSULTANTS' copyright(s) for such Documents. CONSULTANT shall execute and deliver to CITY such instruments of transfer and take such other action that CITY may reasonable request, including, without limitation, executing and filing, at CITY's expense, copyright applications, assignments and other documents required for the protection of CITY's right to such Documents. The CONSULTANT shall retain copies of the Documents for a period of three (3) years from the date of completion of the project. The CITY grants to the CONSULTANT and its sub-CONSULTANTS the right and/or limited license to use a portion of the Documents prepared by the CONSULTANT or its sub-CONSULTANTS in future projects of the CONSULTANT or its sub-CONSULTANTS with said right and/or limited license to use a portion at CONSULTANT's or its sub-CONSULTANT's own risk and without any liability to the CITY. Any modifications made by the CITY to any of the CONSULTANT's or its sub-CONSULTANT's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the CONSULTANT or its sub-CONSULTANT(s) will be at the CITY's sole risk and without liability to the CONSULTANT or its sub-CONSULTANT(s).

9.15 Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

9.16 To encourage prompt and equitable resolution of any litigation, each party hereby waives its rights to a trial by jury in any litigation related to the contract documents.

9.17 It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply due to the joint contribution of both parties.

9.18 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONSULTANT shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the CITY and its successors and assigns.

ARTICLE 10 - INDEMNIFICATION

10.1 This space left blank intentionally.

10.2 CONSULTANT shall indemnify and hold harmless CITY, its appointed and elected officers, engineer and all of their respective officers, agents, and employees, from and against all claims, liabilities, damages, losses, costs and expenses, including, but not limited to, reasonable costs, collection expenses, attorneys' fees, fees and charges of engineers, architects and other professionals, and all court, arbitration or other dispute resolution costs which may arise because of the negligence (whether active or passive), misconduct, or other fault, in whole or in part (whether joint, concurrent, or contributing), of the CONSULTANT, its officers, agents or employees in performance or non-performance of its obligations under the Agreement. CONSULTANT recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the CITY when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by CITY in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of the Agreement. Compliance with any insurance requirements required elsewhere in the Agreement shall not relieve CONSULTANT of its liability and obligation to defend, hold harmless and indemnify the CITY as set forth in this article of the Agreement. Nothing in the Agreement shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.

ARTICLE 11 - SALES TAX INFORMATION

11.1 The CITY is exempt from the payment of Florida State Sales and Use Tax.

ARTICLE 12 - INSURANCE

12.1 The CONSULTANT shall not commence work under this contract until he has obtained all insurance required under this paragraph or by the City have been satisfied.

12.2 Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the City prior to the commencement of the work. These Certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty days (30) prior written notice has been given to the CITY. Policies shall be issued by

companies authorized to do business under the laws of the State of Florida.

12.3 Financial Ratings must be no less than "A" in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide.

12.4 Insurance shall be in force until all work required to be performed under the terms of the Contract is satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, the CONSULTANT shall furnish, at least five (5) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension thereunder is in effect. The CONSULTANT shall not continue to work pursuant to this contract unless all required insurance remains in full force and effect.

12.5 Comprehensive General Liability insurance to cover bodily injury liability and property damage liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrences. Exposures to be covered are:

- Premises and Operation
- Products/Completed Operations
- Broad Form Property Damages
- Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.
- Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, and must include:

- Owned vehicles
- Hired and Non-Owned Vehicles
- Employers' Non-Ownership.

12.6 The CONSULTANT shall hold the CITY, its agents, and employees, harmless on account of claims for damages to persons, property or premises arising out of the operations to complete this Agreement and name the CITY as an additional insured under their policy.

12.7 The CITY reserves the right to require any other insurance coverage it deems necessary depending upon the exposures.

ARTICLE 13 - INDEPENDENT CONSULTANT

13.1 This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONSULTANT is an independent CONSULTANT under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The CONSULTANT shall retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONSULTANT's activities and responsibilities hereunder provided. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY and the CITY will not be liable for any obligation incurred by CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.

ARTICLE 14 - E-VERIFY

E-Verify 448.095 Fla Stat (2025) - By entering into this Agreement, the CONSULTANT becomes obligated to comply with the provisions of Section 448.095, Fla . Stat. (2025), "Employment Eligibility", as amended from time to time. This includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subCONSULTANT does not employ, contract with, or subcontract with, an unauthorized alien. CONSULTANT agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Fla Stat. (2025), as amended; and CONSULTANT will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. CONSULTANT will also be liable for any additional costs to City incurred as a result of the termination of this Agreement in accordance with this section.

ARTICLE 15 - NOTICE

Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the CONSULTANT and the CITY designate the following as the respective places for giving of notice:

CITY: Michael E. Jackson, City Manager
207 Begonia Drive

Pahokee, Fl 33476

Copy To: Burnadette Norris-Weeks, City Attorney
Burnadette Norris-Weeks, P.A.
401 North Avenue of the Arts
Fort Lauderdale, Florida 33311

CONSULTANT: C.A.P. Engineering, Inc.
Carlos Penin
343 Almeria Avenue
Coral Gables, Fl 33134

THE SPACE IS INTENTIONALLY LEFT BLANK

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals
_____ day of January 2025.

CITY OF PAHOKEE

ATTEST:

Nylene Clarke, CMC, City Clerk

BY:

Keith W. Babb, Jr., Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Burnadette Norris-Weeks, City Attorney

Michael E. Jackson, City Manager

CONSULTANT

WITNESSES:

BY: _____
CARLOS PENIN
343 ALMERIA AVENUE
CORAL GABLES, FL 33134

_____ Print Name of CONSULTANT

ATTEST:

SECRETARY

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ as _____, of ___ a Florida corporation, and acknowledged executed the foregoing Agreement as the proper official of _____, for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this __ day of _____, 2025.

_____ NOTARY PUBLIC

My Commission Expires:

EXHIBIT "A"

CAP Engineering CEI Agreement

EXHIBIT "B" AGREEMENT WITH FDOT
FDOT Financial Project No. 442030-1-54-01

EXHIBIT "C"
INSURANCE CERTIFICATE