

## CONTINUING SERVICES AGREEMENT FOR PAVEMENT MANAGEMENT

**THIS AGREEMENT** is entered into this day 8th of May, 2023, between WATSON CONSTRUCTION COMPANY, LLC, a Florida limited liability company (“Contractor”) and CITY OF GAINESVILLE, a Florida municipal corporation (“City”). Collectively, the City and Contractor are hereinafter referred to as the “Parties.”

### **WITNESSETH:**

In consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

- 1 **THE WORK.** The Contractor shall furnish all labor, material, equipment, and services covered by all documents attached as exhibits and incorporated by reference in this Agreement, hereinafter collectively referred to as “Contract Documents”, which shall include all necessary work and all work incidental thereto (the “Work”). All Work shall be performed and completed in accordance with the Contract Documents. The Contract Documents are made part of this Agreement as set forth herein. Receipt of the Contract Documents are herein acknowledged by the Contractor.
  
- 2 **TERM AND PRICING .**
  - 2.1. **Term.** The Agreement is effective upon execution by both Parties and shall continue through September 30, 2023 unless earlier terminated as provided herein. The Parties may renew this Agreement for two (2) additional (2) year periods at the same terms and conditions outlined herein.
    - 2.1.1. The City’s performance and obligation to pay under this Agreement is contingent upon a specific annual appropriation by the City Commission. The Parties hereto understand that this Agreement is not a commitment of future appropriations. Therefore, the continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes, and that the failure of the City Commission to do so shall not constitute a breach or default of this Supplemental Agreement.
  
  - 2.2. **Pricing.** The Contractor shall be paid a sum not to exceed \$4,000,000.00 per fiscal year. The City shall pay the Contractor in accordance with the pricing, as adjusted as provided herein, contained in

the Contractor's Bid Submittal dated January 27, 2023, which is shown in **Exhibit 1**, for all services actually, timely and faithfully performed.

- 2.2.1. Monthly bituminous adjustments are applicable to this Agreement as outline in the Technical Specifications.
- 2.2.2. The City reserves the option to add additional services within the scope of the original bid. Such additional services and pricing shall be authorized in the form of a Work Order per Paragraph 4 of this Agreement.
- 2.2.3. The City shall reimburse the Contractor any costs and fees associated with Payment and Performance Bonds required by Paragraph 6 of this Agreement plus a three percent (3%) mark-up. Costs, fees and mark-up shall be authorized in the Work Order per Paragraph 4 of the Agreement.
- 2.2.4. Inasmuch as failure to complete the a Work Order within the time fixed will result in substantial injury to the City and whereas damages arising from such failure cannot be calculated with any degree of certainty, it is hereby agreed that if such Work has not reached Milestone, Substantial or Final Completion within the time required a Work Order, the Contractor shall pay the City as liquidated damages and not as a penalty the sum outlined in the Technical Specifications for each and every calendar day after the date fixed for Milestone, Substantial or Final Completion.
- 2.2.5. Unit prices may be adjusted with term renewals based on a Consumer Price Index or Producer Price Index acceptable to the Parties.

### **3 COMPLIANCE WITH REGULATIONS.**

- 3.1 The Contractor shall comply with all laws, ordinances, regulations and building code requirements applicable to the Work. The Contractor shall be familiar with all state and local laws, ordinances, code rules and regulations that may in any way affect the Work. Ignorance on the part of the Contractor will in no way relieve the Contractor of responsibility. The Contractor shall abide by and conduct its programs and provide its services in compliance with the provisions of the Civil Rights Act of 1866, Civil Rights Act of 1871, Equal Pay Act of 1963, Civil Rights Act of 1964, Age Discrimination and Employment Acts of 1967, Rehabilitation Act of 1973, 1990 Americans with Disabilities Act, 1991 Federal Civil Rights Act, 1992 Florida Civil Rights Act, and all other applicable ordinances, statutes, laws and amendments thereto.
- 3.2 The Contractor shall (1) 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

Agreement; and (2) shall expressly require any subcontractors performing work or providing services pursuant to the Agreement 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. Alternatively, Contractor shall provide proof that one of the exceptions to the E-Verify federal contractor rule applies.

3.3 **Living Wage.** The definitions, terms and conditions of the City's living wage requirements set forth in Division 2 of Article IX of Chapter 2 of the City's Code of Ordinances shall apply to this Agreement. These requirements include that the Contractor:

3.3.1 Shall pay a living wage to each covered employee during the term of this Agreement, including any extension(s) to this Agreement;

3.3.2 Shall maintain records sufficient to demonstrate compliance with the living wage requirements;

3.3.3 Shall not discharge, reduce the compensation of, or otherwise retaliate against any covered employee for filing a complaint, participating in any proceedings or otherwise asserting the requirement to pay a living wage; and

3.3.4 Shall cooperate with any city audit or investigation concerning compliance with or a reported violation of the living wage requirements, including providing all requested documentation.

Failure to comply with the City's living wage requirements shall be a material breach of this Agreement, enforceable by the City through all rights and remedies at law and equity.

3.4 **Apprentice and Disadvantage Worker Requirements.** Contractor shall comply with the requirements of the Apprentice and Disadvantaged Workers as outlined in Article XI, Chapter 2 of the City's Code of Ordinances for Work Orders issued in excess of \$300,000. Reporting requirements therein shall be completed in accordance with Paragraph 29. Failure of the contractor to comply with the ordinance may result in termination of the contract.

#### 4 **AUTHORIZATION FOR WORK.**

4.1 All services under this Agreement shall be authorized and performed in accordance with a written and jointly executed Work Order. A sample Work Order is included as **Exhibit 2**. Each Work Order shall consist of the work to be performed by the Contractor, the project schedule and any specific or special provisions, pricing or specifications. Modifications to existing work orders shall be authorized and performed in accordance with a written and jointly executed Work Order Amendment. A sample

Work Order Amendment is included as **Exhibit 3**. The City Manager, or designee, is authorized to initiate and sign Work Orders and Work Order Amendments on behalf of the City up to the amount authorized in Paragraph 2.

5 **PERFORMANCE AND PAYMENT BONDS.**

5.1 Within ten (10) business days after signature of Work Order in excess of \$200,000.00 by the Parties, Contractor shall provide the City with Payment and Performance Bonds, in the forms prescribed as **Exhibits 4 & 5**, in the amount of 100% of the total sum of the Work Order, the costs of which are to be paid by the Contractor.

5.2 If the surety for any bond furnished by the Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the Contractor shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the minimum requirements noted above and City's approval.

5.3 In accordance with §255.05(1)(a), Florida Statutes, the Contractor shall record a copy of the Performance and Payment Bonds in the Public Records of Alachua County, Florida, prior to performing any Work under this Agreement. The Contractor shall deliver a certified copy of the recorded Performance and Payment Bonds to the City at least five (5) days prior to performing any Work. The timely delivery of the certified copy of the recorded Performance and Payment Bonds is a condition precedent to City's obligation to make any payments to the Contractor hereunder.

5.4 If at any time after the execution of this Agreement and the surety bonds required for its faithful performance and payment, the City shall deem the surety or sureties upon such bond to be unsatisfactory, or if, for any reason, such bond ceases to be adequate to cover the performance of the Work, the Contractor shall, at its own expense, within five (5) days after the receipt of notice from the City to do so, furnish an additional bond or bonds in such form and amount, and with surety or sureties as shall be satisfactory to the City. In such event, no further payment to the Contractor shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the Work shall be furnished in a manner and form satisfactory to the City.

6 **NOTICES.** Except as otherwise provided in this Agreement, any notice of default or termination from either party to the other party must be in writing and sent by certified mail, return receipt requested, by personal delivery with receipt or by electronic mail to the email addresses below. Notices shall be deemed delivered two (2) business days after mailing, unless made by personal delivery in which case

delivery shall be deemed to occur upon actual receipt by the other party or by electronic mail in which case delivery shall be deemed to occur upon sending the communication. For purposes of all notices, Contractor and City representatives and addresses are:

City:

City of Gainesville Public Works  
PO Box 490 MS 58  
Gainesville, FL 32627-0490  
Attn: Operations Manager  
pubwrk@cityofgainesville.org

Contractor:

Watson Construction Company, LLC  
940 NW 247<sup>th</sup> Drive  
Newberry, FL 32669  
Attn: Douglas Dabney  
Doug.dabney@watsonconstruct.com

## **7 WAIVER OF CLAIMS AND CONTINUING OBLIGATIONS.**

7.1 It is agreed that when all Work for authorized by a Work Order has reached Final Completion and has been inspected and approved by the City, or the City's authorized representatives, the Contractor shall furnish to the City the Contractor's Final Affidavit in the form attached hereto as **Exhibit 6**, or other such release as provided for in §255.05, Florida Statutes, and agreed to by the City. Submission of the Contractor's invoice for final payment shall further constitute the Contractor's representation to the City that all obligations of the Contractor to others, including but not limited to its consultants, subcontractors, and suppliers, incurred in connection with the Work Order have been paid in full. Contractor shall include, with its invoice for final payment, executed and notarized Waivers of Right to Claim against the Payment Bond, in the form attached hereto as **Exhibit 7**, from all laborers, materialmen and subcontractors defined in [§713.01](#), Florida Statutes, who furnished labor, services, or materials for the prosecution of the Work provided for in the applicable Work Order, unless the Contractor provides the City with a written consent from the surety regarding the Work Order or the payment in question.

7.2 The Contractor's obligations to perform the Work and complete the project in accordance with the Contract Documents shall be absolute. Neither approval of any progress, nor approval of any payment by the City, nor the issuance of a certificate of substantial completion, nor any use or occupancy of the project or any part thereof by the City, nor any act of acceptance by the City, nor any failure to do so, nor any correction of faulty or defective work by the City shall constitute an acceptance of Work not in accordance with the Contract Documents.

7.3 The making and acceptance of final payment shall constitute:

7.3.1 A waiver of all claims by the City against the Contractor, other than those arising from unsettled liens, from faulty or defective work appearing after final payment, or from failure to comply with the requirements of the Contract Documents or the terms of any special guarantees specified therein, and

7.3.2 A waiver of all claims by the Contractor against the City, other than those previously made in writing and still unsettled.

8 **INSURANCE.** Throughout the term of this Agreement, the Contractor shall provide insurance of the types and in the amounts set forth below. The Contractor shall also require any subcontractors to provide insurance as set forth below. A current copy of the Contractor Certificate of Insurance showing coverage of the types and in the amounts required is attached hereto as **Exhibit 8**. The Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by the contractor/vendor, its agents, representatives, employees or subcontractors.

8.1 **COMMERCIAL GENERAL LIABILITY.** Coverage must be afforded under a per occurrence form policy for limits not less than \$1,000,000 General Aggregate, \$1,000,000 Products / Completed Operations Aggregate, \$1,000,000 Personal and Advertising Injury Liability, \$1,000,000 each Occurrence, \$50,000 Fire Damage Liability and \$5,000 Medical Expense.

8.2 **AUTOMOBILE LIABILITY.** Coverage must be afforded including coverage for all Owned vehicles, Hired and Non-Owned vehicles for Bodily Injury and Property Damage of not less than \$1,000,000 combined single limit each accident.

8.3 **WORKERS COMPENSATION AND EMPLOYER'S LIABILITY.** Coverage to apply for all employees at STATUTORY Limits in compliance with applicable state and federal laws; if any operations are to be undertaken on or about navigable waters, coverage must be included for the USA

Longshoremen & Harbor Workers Act. Employer's Liability limits for not less than \$100,000 each accident; \$500,000 disease policy limit and \$100,000 disease each employee must be included.

**8.4 BUILDER'S RISK / INSTALLATION FLOATERS (when applicable). Check box if**

**applicable:**

8.4.1 When this contract or agreement includes the construction of and/or the addition to a permanent structure or building; including the installation of machinery and/or equipment, the following insurance coverage must be afforded:

8.4.1.1 Coverage Form: Completed Value, All Risk in an amount equal to 100% of the value upon completion or value of equipment to be installed.

8.4.1.2 When applicable: Waiver of Occupancy Clause or Cessation of Insurance clause. Flood Insurance as available under the National Flood Insurance Program.

**8.5 EMPLOYEE FIDELITY COVERAGE (only applicable to vendors whose employees handle funds):**

Employee Dishonesty coverage must be afforded for not less than \$500,000.00 Blanket all employees ISO Form.

**8.6 OTHER INSURANCE PROVISIONS.** The policies are to contain, or be endorsed to contain, the following provisions:

**8.6.1 Commercial General Liability and Automobile Liability Coverages.**

8.6.1.1 The City of Gainesville, Florida, a municipal corporation, its officials, employees and volunteers are to be covered as an Additional Insured as respects: Liability arising out of activities performed by or on behalf of the Contractor/Vendor; to include Products and/or Completed Operations of the Contractor/Vendor; Automobiles owned, leased, hired or borrowed by the Contractor.

8.6.1.2 The Contractor's insurance coverage shall be considered primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of Contractor/Vendor's insurance and shall be non-contributory.

8.6.2 **All Coverages.** The Contractor/Vendor shall provide a Certificate of Insurance to the City with a thirty (30)day notice of cancellation. The certificate shall indicate if cover is provided under a “claims made” or “peroccurrence” form. If any cover is provided under claims made from the certificate will show a retroactivedate, which should be the same date of the contract (original if contact is renewed) or prior.

8.7 **CERTIFICATE HOLDER.** City of Gainesville, Florida, a municipal corporation

9 **INCORPRATIONS BY REFERENCE AND GOVERNING ORDER OF DOCUMENTS.**

9.1 All documents listed below, if not contained herein, are hereby incorporated by reference in this Agreement. In cases of discrepancy, the governing order of the documents is as follows:

- 9.1.1 Work Orders and Amendments thereto
- 9.1.2 This Agreement, as may be amended
- 9.1.3 Bid Addendums
- 9.1.4 Technical Specifications prepared by the City, signed and sealed on 6/9/2022
- 9.1.5 Addendum No. 1 to ITB, dated January 27, 2023
- 9.1.6 Invitation to Bid (ITB) No. PWDA-230027-DH dated December 19, 2022
- 9.1.7 Contractor’s Bid Submittal dated January 27, 2023
- 9.1.8 Schedule of Values

10 **INDEMNIFICATION.**

10.1 To the maximum extent permitted by Florida law, the Contractor shall indemnify and hold harmless the City, and their officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys’ fees, caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor or anyone employed or utilized by the Contractor in the performance of this Agreement. Contractor agrees that indemnification of the City shall extend to any and all Work performed by the Contractor, its subcontractors, employees, agents, servants or assigns.

10.2 The Contractor obligation to indemnify under this Article will survive the expiration or earlier termination of this Agreement.

10.3 This obligation shall in no way be limited in any nature whatsoever by any limitation on the amount or type of the Contractor’s insurance coverage, or by limitation on the amount or type of

damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts or employee benefit acts.

10.4 Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the City's sovereign immunity or the provisions or limits of liability of §768.28, Florida Statutes.

## 11 **PUBLIC RECORDS.**

**11.1 General Provisions:** Any document submitted to the City may be a public record and is open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency per §119.011(12), Florida Statutes. Any document is subject to inspection and copying unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law. Florida has a very broad public records law and certain records of a Contractor may be considered public records. Accordingly, by entering into an agreement with the City, Contractor must:

- a. Keep and maintain public records required by the City to perform the service.
- b. 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.
- 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 City.
- d. Upon completion of the Work, or in the event this Agreement is terminated, the Contractor, when acting on behalf of the City as provided under §119.011(2), Florida Statutes, shall 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 or termination of the Agreement, it must 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 the

completion or termination of the Agreement all applicable requirements for retaining public records shall be met. All records stored electronically shall 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.

**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 THE CUSTODIAN OF PUBLIC RECORDS AT E-MAIL [clerks@cityofgainesville.org](mailto:clerks@cityofgainesville.org) PHONE (352-334-5015) OR PO BOX 490, STATION 19, GAINESVILLE, FL, 32627-0490**

## **11.2 Confidential Information**

- 11.2.1 During the term of this Agreement, the Contractor may claim that some or all of Contractor's information, including, but not limited to, software documentation, manuals, written methodologies and processes, pricing, discounts, or other considerations (hereafter collectively referred to as "Confidential Information"), is, or has been treated as confidential and proprietary by Contractor in accordance with §812.081, Florida Statutes, or other law, and is exempt from disclosure under the Public Record Act. Contractor shall clearly identify and mark Confidential Information as "Confidential Information" or "CI" and the City shall use reasonable efforts to maintain the confidentiality of the information properly identified by the Contractor as "Confidential Information" or "CI."
- 11.2.2 The City shall promptly notify the Contractor/Professional in writing of any request received by the City for disclosure of Contractor's Confidential Information and the Contractor may assert any exemption from disclosure available under applicable law by seeking a protective order against disclosure from a court of competent jurisdiction. Contractor shall protect, defend, indemnify, and hold the City, its officers, employees and agents free and harmless from and against any claims or judgments arising out of a request for disclosure of Confidential Information. Contractor shall investigate, handle, respond to, and defend, using counsel chosen by the City, at Contractor's sole cost and expense, any such claim, even if any such claim is groundless, false, or fraudulent. Contractor shall pay for all costs and expenses related to such claim, including, but not limited to, payment of attorney fees, court costs, and expert witness fees and expenses. Upon completion of this Agreement, the provisions of this paragraph shall continue to survive. Contractor releases City from claims or damages related to disclosure by City.

- 11.3 **Compliance:** The Contractor may be subject to penalties under §119.10, Florida Statutes, if the Contractor fails to provide the public records to the City within a reasonable time.

## 12 STARTING THE WORK

### 12.2 Schedule

Within ten (10) days after execution of a Work Order under the Agreement, the Contractor will submit to the Public Works (PW) Operations Manager for approval an estimated progress schedule indicating the starting and completion dates of the various stages of the Work and a schedule of Shop Drawings submissions.

### 12.3 Pre-Construction Conference

Before starting Work, a conference will be held to review the schedules and submittal package (See 12.5 Submittals), to establish procedures for handling Shop Drawings and other submissions, to establish procedures for processing applications for payment, and to establish a working understanding between the parties as to the project. Present at the conference will be the PW Operations Manager, and/or authorized representatives, the Contractor, and utility company representatives.

### 12.4 Notice to Proceed

Upon execution of a Work Order, the PW Operations Manager will give the Contractor a written Notice to Proceed stating date by which the Contractor must start the Work; but such date shall not be more than forty-five (45) days after the date of execution of the Work Order. No work shall be done prior to receipt of the Notice to Proceed.

### 12.5 Commencement of Time

The Work Order Time shall commence on the date when the Work is actually started but no later than the date provided in the Notice to Proceed.

### 12.6 Submittals

The Contractor's submittal package for the Pre-Construction meeting shall include the Surveyor's License Confirmation on a form provided by the City, Maintenance of Traffic Plan, Erosion & Sedimentation Control Plan, and Stormwater Pollution Prevention Plan, if applicable to the Work Order, to be accepted by the City prior to any construction activities along with any other requirements or permits and other submittal required by this Agreement or Work Order. All submittals must be accepted by the City prior to implementation.

## 13 OWNERSHIP AND COPIES OF DOCUMENTS; RECORD DOCUMENTS

13.2 All Specifications, Drawings and copies thereof furnished by the City shall remain the property of the City. They shall not be used on another project, and with the exception of those sets of Contract Documents which have been signed in connection with the execution of the Agreement, shall be returned to the City on request upon completion of the project.

13.3 The Contractor will keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. These shall be available to the PW Operations Manager.

#### 14 **WORK BY OTHERS**

14.2 The City may perform additional work related to the project by itself, or may enter other contracts for work on the project. The Contractor shall afford the City and/or other contractors reasonable opportunity for the introduction and storage of materials and equipment and the execution of work and shall properly connect and coordinate the Contractor's work with theirs.

14.3 If any part of the Contractor's Work depends for proper execution or results upon the work of any such other contractor (or the City), the Contractor will inspect and promptly report to the PW Operations Manager in writing any defects or deficiencies that render it unsuitable. The Contractor's failure to so report shall constitute an acceptance of the other work as to be fit and proper for the relationship of their Work, except as to defects and deficiencies which may appear in the other work after the execution of their Work.

14.4 The Contractor will do all cutting, fitting and patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. The Contractor will not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the PW Operations Manager.

14.5 If the performance of additional work by other contractors or the City is not noted in the Contract Documents, written notice thereof shall be given to the Contractor prior to starting any such additional work. Contractor work schedules shall be adjusted to allow for any necessary utility adjustments identified prior to start of work. If the Contractor believes that the performance of such additional work by the City or others causes the Contractor additional expense or entitles it to an extension of the Work Order Time, it may make a claim as provided in Paragraphs 24 to 26.

## 15 **RESPONSIBLE AGENT**

15.2 The Contractor shall designate and submit a responsible agent and alternate as necessary, for all dealings, communications, or notices or contracts between the City and the Contractor.

15.3 The PW Operations Manager will be the responsible agent for the City. Any notice or communication to or from the responsible agent shall be deemed to be a communication to the Contractor.

## 16 **ACCIDENT PREVENTION**

16.2 Precaution shall be exercised at all times for the protection of employees, other persons and property.

16.3 Contractor's employees shall report to their superintendent any hazardous conditions or items in need of repair noted during the performance of work. Said superintendent shall thereupon notify the responsible agent of such conditions.

## 17 **SUBCONTRACTS**

17.2 The Contractor will not employ any Subcontractor (whether initially or as a substitute) against whom the City or the PW Operations Manager may have reasonable objection, nor will the Contractor be required to employ any Subcontractor against whom he has reasonable objection. The Contractor will not make any substitution for any Subcontractor who has been accepted by the City and the PW Operations Manager, prior to written concurrence by the PW Operations Manager.

17.3 The Contractor will be fully responsible for all acts and omissions of its Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that the Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in the Agreement shall create any contractual relationship between any Subcontractor and the City or any obligation on the part of the City

to pay or to see to the payment due any Subcontractor, except as may otherwise be required by law. The PW Operations Manager may furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to the Contractor as compensation for specific Work performed.

17.4 The Specifications and Drawings shall not control the Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any trade.

17.5 The Contractor agrees to specifically bind every Subcontractor to all of the applicable terms and conditions of the Agreement. Every Subcontractor, by undertaking to perform any of the Work, will thereby be contractually bound to the Contractor by such terms and conditions.

## 18 **PHYSICAL AND SUBSURFACE CONDITIONS**

18.2 The PW Operations Manager will, upon request, furnish to the Contractor copies of all available boundary surveys and subsurface tests.

18.3 The Contractor will promptly notify the PW Operations Manager in writing of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents. The PW Operations Manager will promptly investigate those conditions and determine if further surveys or subsurface tests are necessary. Promptly thereafter, the PW Operations Manager will obtain the necessary additional surveys and tests and furnish copies to the Contractor. If the PW Operations Manager finds that the results of such surveys or tests indicate subsurface or latent physical conditions differing significantly from those indicated in the Contract Documents, a Work Order Amendment shall be issued incorporating the necessary revisions.

## 19 **PW OPERATIONS MANAGER'S STATUS DURING CONSTRUCTION.**

19.2 The PW Operations Manager acting directly or through duly authorized representatives (Project Managers, Inspectors and Consultants) shall be the City's representative during the construction period. All instructions of the City to the Contractor shall be issued through the PW Operations Manager.

19.3 The PW Operations Manager will make periodic visits to the site to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The PW Operations Manager will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, nor will the PW Operations Manager be responsible for the construction means, methods, techniques, sequences, procedures or the safety precautions incident thereto. The PW Operations Manager's efforts will be directed toward providing assurance for the City that the completed project will conform to the requirements of the Contract Documents, but PW Operations Manager will not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents. On the basis of the PW Operations Manager's on-site observations as an experienced and qualified construction professional, the PW Operations Manager will keep the City informed of the progress of the Work and will endeavor to guard the City against defects and deficiencies in the Work of the Contractor.

19.4 The PW Operations Manager will have authority to disapprove of or reject Work which is defective; i.e., it is unsatisfactory, faulty or defective, does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in Paragraph 21. The PW Operations Manager will also have authority to require special inspection or testing of the Work as provided in Paragraph 23.3, whether or not the Work is fabricated, installed or completed.

19.5 Neither the PW Operations Manager's authority to act under Paragraph 19 nor any decision made by the PW Operations Manager in good faith to exercise or not exercise such authority, shall give rise to any duty or responsibility of the City to the Contractor and Subcontractor, any of their agents or employees or any other person performing any of the Work.

## 20 **PW OPERATIONS MANAGER'S INTERPRETATIONS AND DECISIONS.**

20.2 The PW Operations Manager will issue with reasonable promptness such written clarifications or interpretations (in the form of drawings or otherwise) as necessary for the proper execution of the Work. Such clarifications and interpretations are to be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the Contractor believes that a written clarification and interpretation entitles it to an increase in the Work Order Price, it may make a claim therefore as provided in Paragraph 25.

- 20.3 The PW Operations Manager will be the initial interpreter of the terms and conditions of the Contract Documents and the judge of the performance thereunder. In this capacity, the PW Operations Manager will exercise best efforts to insure faithful performance by both the City and the Contractor. The PW Operations Manager will not show partiality to either and shall not be liable for the result of any interpretation or decision rendered in good faith. Claims, disputes and other matters relating to the execution and progress of the Work or the interpretation of or performance under the Contract Documents shall be referred initially to the PW Operations Manager for decisions, which shall render in writing within a reasonable time.
- 20.4 The Contractor may appeal any written decision made by the PW Operations Manager within fourteen (14) days in accordance with Paragraph 36.

## 21 **TESTS AND INSPECTIONS.**

- 21.2 If the Agreement, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to be inspected, tested or approved by someone other than the Contractor, the Contractor will give the PW Operations Manager timely notice of readiness therefor. The Contractor will furnish the PW Operations Manager the required certificates of inspection, testing or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organization as may be required by law or the Agreement. The cost of all such inspections, test and approvals shall be borne by the Contractor unless otherwise provided. If any such Work required so to be inspected, tested or approved is covered up without written approval or consent of the PW Operations Manager, it must, if directed by the PW Operations Manager, be uncovered for observation at the Contractor's expense.
- 21.3 Any Work which fails to meet the requirements of any such test, inspection or approval, and any Work which meets the requirements of any such test or approval but does not meet the requirements of the Contract Documents, shall be considered defective. Such defective Work may be rejected, corrected or accepted as provided in Paragraph 28.
- 21.4 Neither observations by the PW Operations Manager nor inspections, tests, or approvals by persons other than the Contractor shall relieve the Contractor from its obligations to perform the Work in accordance with the Agreement requirements of the Contract Documents.

## 22 **CONTRACTOR'S SUPERVISION AND SUPERINTENDENCE.**

- 22.2 The Contractor shall supervise and direct the Work efficiently and with its best skill and attention. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Before undertaking the Work, the Contractor shall carefully study and compare the Contract Documents and check and verify all figures shown thereon and all field measurements. The Contractor will at once report in writing to the PW Operations Manager any conflict, error or discrepancy which it may discover. The Contractor will be responsible to see that the finished Work complies accurately with the Contract Documents.
- 22.3 The Contractor shall maintain, at all times during its progress, a resident superintendent satisfactory to the PW Operations Manager. The superintendent shall not be replaced without the consent of the PW Operations Manager, except under extraordinary circumstances. The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor and shall constitute notice under the applicable clauses of this Agreement.
- 22.4 The Contractor will provide competent, suitably qualified personnel and perform construction as required by the Contract Documents. If applicable to the Work Order, survey and layout work shall be performed under direction of a Florida Registered Land Surveyor. The surveyor is required to sign, seal and return a form provided by the City certifying the surveyor will be responsible for providing layout. The Contractor will at all times maintain good discipline and order among its employees at the site.
- 22.5 The City will not be responsible for the acts or omissions of the Contractor, any Subcontractors, any of their agents or employees or any other persons performing any of the Work.
- 22.6 The Contractor shall have a responsible person or persons available on a 24-hour basis seven (7) days a week in order that contact can be made in emergencies and in cases where immediate action must be taken to maintain traffic or to overcome any other problem that might arise. The furnishing of a

telephone number where such person or persons can be reached outside of normal working hours will constitute compliance with this provision.

## **23 ACCESS TO THE WORK: UNCOVERING FINISHED WORK.**

23.2 The PW Operations Manager and its representatives and other representatives of the City will at all times have access to the Work. The Contractor will provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

23.3 If any Work is covered contrary to the request of the PW Operations Manager, it must, if requested by the PW Operations Manager, be uncovered for observation and replaced at the Contractor's expense.

23.4 If any Work has been covered which the PW Operations Manager has not specifically requested to observe prior to its being covered, or if the PW Operations Manager considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the PW Operations Manager's request, will uncover, expose or otherwise make available for observation, inspection or testing, that portion of Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective or does not meet the requirements of the Contract Documents, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services. If, however, such Work is found to be non-defective and meets the requirements of the Contract Documents, the Contractor will be allowed an increase in the Work Order Price or extension of the Work Order Time directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if Contractor makes a claim therefore as provided in Paragraph 25 and 26.

## **24 CHANGES IN THE CONTRACT WORK.**

24.2 Without invalidating the Agreement, the City may, at any time or from time to time, order additions, deletions, or revisions in the Work. These will be authorized by Work Order or Work Order Amendment. Upon receipt of written authorization, the Contractor will proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any changes in the Work cause an increase or decrease in the Work

Order Price, addition of Pay Items, or an extension or shortening of the Work Order Time, an equitable adjustment will be made as provided in Paragraphs 25 and 26 under a Change Order.

- 24.3 The Director or PW Operations Manager may authorize minor changes or alterations in the Work not involving extracost and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Work Order or Work Order Amendment. If the Contractor believes that any minor change or alteration authorized by the Director or PW Operations Manager entitles the Contractor to an increase in the Work Order Price or Work Order Time, it may make a claim as provided in Paragraphs 25 and 26.
- 24.4 Additional work performed by the Contractor prior to written authorization will not automatically entitle it to additional compensation, an increase in the Work Order Price, or an extension of the Work Order Time.
- 24.5 It is the Contractor's responsibility to notify its surety of any changes affecting the general scope of the Work or change in the Work Order Price, and the amount of the applicable Bonds shall be adjusted accordingly. The Contractor shall furnish proof of such adjustment to the City.

## **25 CHANGE OF WORK ORDER PRICE.**

- 25.2 The Work Order Price constitutes the total compensation payable to the Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the Contractor shall be at its expense without change in the Work Order Price.
- 25.3 The Work Order Price may only be changed by a Work Order Amendment. If the Contractor is entitled by the Contract Documents to make a claim for an increase in the Work Order Price, notice of intent to file a claim shall be delivered to the PW Operations Manager in writing within ten (10) days of the occurrence of the event giving rise to the claim. The claim shall then be delivered to the PW Operations Manager in writing within twenty (20) days after the conclusion of the event giving rise to the claim unless PW Operations Manager allows additional period of time to ascertain accurate cost data. IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE WORK ORDER PRICE SHALL BE WAIVED IF NOT SUBMITTED IN STRICT

ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION. Work Order Amendments will be approved by the following procedure:

25.2.1 The City Manager, or designee, may approve Work Order Amendments that, either cumulatively or individually, increase the Work Order Price within the amount authorized in Paragraph 2.

25.4 The value of any Work covered by a Work Order Amendment, for any claim for an increase in the Work Order Price, shall be determined in the following ways:

25.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.

25.3.2 Mutual acceptance of a lump sum or unit price.

25.3.3 Cost and a mutually acceptable fixed amount for overhead and profit.

25.3.4 If none of the above methods is agreed upon, the value shall be determined on the basis of costs and a percentage for overhead and profit. Costs shall only include labor (payroll, payroll taxes, fringe benefits, workman's compensation, etc.) materials, equipment, and other incidentals directly related to the Work involved. The maximum percentage which shall be allowed for the Contractor's combined overhead, expenses, indirect costs and profit, shall be as follows:

25.3.4.1 For all such Work done by the Contractor's own forces, the Contractor may add up to 10% (ten percent) of its actual increase in cost; and,

25.3.4.2 For all such Work done by Subcontractors, each Subcontractor may add up to 10% (ten percent) of its actual net increase in cost for combined overhead and profit; and the Contractor may add up to 5% (five percent) of the Subcontractor's total for its combined overhead and profit, provided that no overhead or profit shall be allowed on costs incurred in connection with premiums for public liability insurance or other special insurance directly related to such Work.

25.4 Except for as provided in a Work Order Amendment, no financial claim for delay to the project resulting from the Work Order Amendment approval process will be allowed.

25.5 Pay factor adjustments shall be in accordance with details outlined in project manual/technical specifications.

25.6 Whenever the cost of any Work is to be determined pursuant to this section, the Contractor shall submit in a form acceptable to the City an itemized cost breakdown together with supporting documentation. Whenever a change in the Work is based upon mutual acceptance of a lump sum, whether the amount is an addition, credit, or no-change-in-cost, the Contractor shall submit an estimate substantiated by complete itemized breakdown:

25.6.1 The breakdown shall list quantities and unit prices for materials, labor, equipment and other items of costs.

25.6.2 Whenever a change involves the Contractor and one (1) or more subcontractor and the change is an increase in the agreed compensation, the overhead and profit percentage for the Contractor and each subcontractor shall be itemized separately.

## 26 **CHANGE OF THE WORK ORDER TIME.**

26.2 Work Order Time changes shall be by a Work Order Amendment. If the Contractor is entitled by the Contract Documents to make a claim for an extension in the Work Order Time, notice of intent to file a claim shall be in writing delivered to the PW Operations Manager within ten (10) days of the occurrence of the event giving rise to the claim. The claim shall then be delivered to the PW Operations Manager in writing within fifteen (15) days after the conclusion of the event giving rise to the claim. IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE WORK ORDER TIME SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION. The City Manager, or designee, may approve any extension in Work Order Time. Any change in the Work Order Time resulting from any such claim shall be incorporated in a Work Order Amendment.

26.3 The Work Order Time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor, if it makes a claim therefore as provided in Paragraph 26.1. Such delays shall only include acts of neglect by any separate contractor employed by the City, fires,

floods, labor disputes, epidemics, abnormal weather conditions, acts of God or other delays at the sole discretion of the City.

26.2.1 Process for tracking and granting Weather Days shall be in accordance with the project manual/technical specifications. If the project manual/technical specifications is silent on Weather Days then Work Order Time shall not be extended for weather. Requests for Weather Days shall be submitted monthly with the Contractor's application for payment. The Contractor's failure to submit a monthly request for Weather Days shall constitute a waiver of Work Order Time extensions for weather for all dates prior to submission of the application for payment.

26.4 All time limits stated in the Contract Documents are of the essence in the Agreement. The provisions of Paragraph 26 shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.

26.5 Except as provided in a Work Order Amendment, no financial claim for delay to the project resulting from the Work Order Amendment approval process will be allowed.

## 27 **NEGLECTED WORK.**

27.2 If the Contractor should neglect to prosecute the Work in accordance with the Agreement, including any requirements of the progress schedule, after three (3) days written notice to the Contractor, the City may, without prejudice to any other remedy it may have, make good such deficiencies, and the cost thereof (including compensation for additional professional services) shall be charged against the Contractor. In this case a Work Order Amendment shall be issued incorporating the necessary revisions in the Work Order, including an appropriate reduction in the Work Order Price. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor will pay the difference to the City.

## 28 **WARRANTY AND GUARANTEE; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.**

28.2 The Contractor warrants and guarantees to the City that all materials and equipment will be new unless otherwise specified; that all Work will be of good quality and free from faults or defects and in accordance with the requirements of the Contract Documents. All unsatisfactory

Work, all faulty or defective Work and all Work not conforming to the requirements of the Contract Documents or of such inspections, tests or approvals shall be considered defective. Prompt notice of all defects shall be given to the Contractor. All defective Work, whether or not in place, may be rejected.

- 28.3 If required by written notice of the Director or the PW Operations Manager prior to approval of final payment, the Contractor will promptly, without cost to the City, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the PW Operations Manager, remove it from the site and replace it with non-defective Work. If the Contractor does not correct such defective Work or remove and replace such rejected Work within a reasonable time, the City may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect cost of such correction or removal and replacement, including compensation for additional professional services, shall be paid by the Contractor, and an appropriate Work Order Amendment shall be issued deducting all such costs from the Work Order Price. The Contractor will also bear the expenses of making good all Work of others destroyed or damaged by the correction, removal or replacement of the Contractor's defective Work.
- 28.4 If, after the approval of final payment and prior to the expiration of one year after the date of substantial completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, the Contractor will promptly without cost to the City and in accordance with the City's written instructions either correct such defective Work, or, if it has been rejected by the City, remove it from the site and replace it with non-defective Work. If the Contractor does not promptly comply with the terms of such instructions, the City may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, will be paid by the Contractor.
- 28.5 If, instead of requiring correction or removal and replacement of defective Work, the City prefers to accept it, the City may do so. In such case, the appropriate reduction in the bid item amount shall be negotiated by the Contractor and City with the appropriate reductions submitted in the application for final payment. In the event the appropriate reduction cannot be negotiated, the provisions of Paragraph 25.3.4 shall prevail.

## 29 APPLICATIONS FOR PROGRESS PAYMENTS.

- 29.2 Not more than once a month, the Contractor will submit to the PW Operations Manager for review the application for payment, covering the Work completed as of the date of the application. If payment is requested by the Contractor on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the request for payment shall also be accompanied by such supporting data, satisfactory to the PW Operations Manager, as will establish 100% of invoice cost. Such payment to the Contractor shall not exceed seventy-five percent (75%) of the Unit Bid Price. Materials missing or damaged, for which partial or total payment has been made, shall be replaced by the Contractor at its expense.
- 29.3 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the project or not, will have passed to the City prior to making the application for payment, free and clear of all liens, claims, security interests and encumbrances (hereafter referred to as "liens"). The Contractor further warrants and guarantees that no Work, materials or equipment covered by an application for payment will have been acquired by the Contractor or by any other person performing the Work at the site or furnishing materials and equipment for the Project subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. Non-payment of Subcontractors and suppliers will be referred to the Contractor's Surety for resolution.
- 29.4 Five percent (5%) of the amount earned through each progress payment will be withheld as retainage.
- 29.5 Each application for payment shall be incomplete and not authorized for payment unless accompanied by the following documents:
- 29.4.1 A certification of payment to Subcontractors on a form provided by the City that all Subcontractors having an interest in the Agreement were paid for satisfactory performance of their Agreements and that the retainage is returned to Subcontractors within 30 days after satisfactory completion of the Subcontractor's work.

29.4.2 A waiver of claims, on a form provided by the City, for any and all Subcontractors or materialmen that have furnished a notice of non-payment. The City will honor an exception to this clause when the Contractor demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the City and the affected Subcontractor.

29.4.3 If applicable, a report of Apprentice and Disadvantage Worker information for the Contractor and each Subcontractor that includes the following:

29.4.3.1. Total labor hours for the project;

29.4.3.2. Total labor hours performed by apprentice and disadvantaged workers;

29.4.3.3. The apprentice and/or disadvantage worker status for each such person; and

29.4.3.4. The name, address, work classification and hours worked each pay period for each apprentice and disadvantage worker on the construction project.

29.6 The PW Operations Manager will, within ten (10) days after Contractor concurrence of each application for payment, indicate in writing approval of payment, less any retainage as specified by the Agreement, and present the application to the City's Budget & Finance Department for payment. The City will pay the Contractor the amount approved by the PW Operations Manager in accordance with Florida's Prompt Payment Act.

### 30 **APPROVAL OF PAYMENTS.**

30.2 The PW Operations Manager's approval of any payment requested in an application for payment shall constitute a representation to the City, based on the PW Operations Manager's on-site observations of the work in progress as an experienced and qualified construction professional and on its review of the application for payment and the supporting data, that the Work has progressed to the point indicated; to the best of its knowledge, information and belief, that the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the Contract Document and any qualifications stated in its approval); and that the Contractor is entitled to payment of the amount approved. However, by approving any such payment, the PW Operations Manager shall not thereby be deemed to

have represented that exhaustive or continuous on-site inspections were made to check the quality or the quantity of the Work; that the means, methods, techniques, sequences and procedures of construction were reviewed; or that any examinations were made to ascertain how or for what purpose the Contractor has used the monies paid or to be paid to it.

30.3 The PW Operations Manager's approval of final payment shall constitute an additional representation to the City that the conditions precedent to the Contractor's being entitled to final payment, as set forth in Paragraph 31.3, have been fulfilled.

30.4 The PW Operations Manager may refuse to approve the whole or any part of any payment if, in their opinion, the PW Operations Manager is unable to make the foregoing representations to the City. The PW Operations Manager may also refuse to approve any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, may nullify any such payment previously approved, to such extent as may be necessary in their opinion to protect the City from loss because:

30.3.1 The Work is defective.

30.3.2 Claims have been filed, or there is reasonable evidence indicating the probable filing thereof.

30.3.3 The Work Order Price has been reduced.

30.3.4 The City has been required to complete neglected Work in accordance with Paragraph 27.

30.3.5 The City has been required to correct defective Work or complete the Work in accordance with Paragraph 28.

30.3.6 Unsatisfactory prosecution of the Work, including failure to clean up as required by Paragraph 32.

### 31 **FINAL PAYMENT.**

31.2 Upon notification from the Contractor that the project is complete, the PW Operations Manager will make a final inspection with the Contractor and will notify the Contractor in writing of any particulars in which this inspection reveals that the Work is incomplete or

defective. The Contractor shall immediately make such corrections as are necessary to remedy such defects.

31.3 After the Contractor has completed any such corrections to the satisfaction of the PW Operations Manager and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection and other documents, all as required by the Contract Documents, the Contractor may receive final payment pursuant to the procedure for progress payments. The final application for payment shall be accompanied by the Contractor's Final Apprentice & Disadvantage's Worker's Reporting (if applicable), Contractor's Final Payment Affidavit, Subcontractor/Materialman Waiver of Claims, and Final Payment Certification to Subcontractors, utilizing forms provided by the City. Nothing in this section waives the rights of the Contractor under Section 255.05(11), Florida Statutes. The PW Operations Manager will execute a Certificate of Completion and recommend final payment.

31.4 If, on the basis of the PW Operations Manager's observation and review of the Work during construction, their final inspection and review of the final application for payment, all as required by the Contract Documents, the PW Operations Manager is satisfied that the Work has been completed and the Contractor has fulfilled all of its obligations under the Contract Documents, the PW Operations Manager will, within ten (10) days after Contractor's concurrence of the final application for payment, indicate in writing the PW Operations Manager's approval of payment and present the application to the City Budget & Finance Department for payment. The City will pay the Contractor the amount approved by the PW Operations Manager in accordance with Florida's Prompt Payment Act.

31.5 If after substantial completion of the Work, final completion thereof is materially delayed through no fault of the Contractor, and the PW Operations Manager so confirms, the City shall, upon certification by the PW Operations Manager, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the PW Operations Manager prior to certification of such payment. Such payment shall be made

under the terms and conditions governing final payment, except that it shall not constitute a waiver of claim.

## 32 **CLEANING UP.**

32.2 The Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work, and, at the completion of the Work, it shall remove all waste materials, rubbish and debris from and about the premises, as well as all tools, construction equipment and machinery and surplus materials, leaving the site clean and ready for occupancy by the City. The Contractor shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents.

## 33 **CITY'S RIGHT TO STOP OR SUSPEND WORK.**

33.2 If the Work is defective, if the Contractor fails to supply sufficient skilled workmen or suitable materials or equipment, if the Contractor fails to comply with the Contract Documents or Specifications, or if the Contractor fails to make prompt payments to Subcontractors for labor, materials or equipment, the City may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The Contractor will be allowed no increase in Work Order Price or extension of the Work Order Time. The City may, at any time and without cause, suspend the Work, or any portion thereof, for a period of not more than ninety (90) days by notice in writing to the Contractor, and shall determine the date on which the Work will resume. The Contractor shall resume the work on the date so determined. The Contractor may be allowed an increase in the Work Order Price or an extension of the Work Order Time directly attributable to any suspension provided the Contractor makes a claim as provided in Paragraphs 25 and 26.

## 34 **DEFAULT AND CITY'S RIGHT TO TERMINATE.**

34.2 The failure of the Contractor to comply with any provision of this Agreement will place the Contractor in default. Prior to terminating the Agreement, the City will notify the Contractor in writing. This notification will make specific reference to the provision which gave rise to the default. The City will give the Contractor seven (7) days to cure the default or develop a plan and time line acceptable to the City to cure the default. The PW Operations Manager is

authorized to provide written notice of default on behalf of the City, and if the default situation is not corrected within the allotted time, the Public Works Director is authorized to provide final termination notice on behalf of the City to the Contractor.

- 34.3 If the Contractor is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Contractor or for any of its property, or if the Contractor files a petition to take advantage of any debtors' act, or to reorganize under the bankruptcy or similar laws, or repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or repeatedly fails to make prompt payments to Subcontractors or for labor, materials, or equipment, or disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or disregards the authority of the Director of PW Operations Manager, or Contractor otherwise violates any provisions of the Contract Documents, then the City may, without prejudice to any other right or remedy and after giving the Contractor and its surety seven (7) days written notice, terminate the service of the Contractor and take possession of the project and of all materials related the Work and finish the Work by whatever method the City may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished.
- 34.4 Upon thirty (30) days written notice to the Contractor, the City may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the Agreement. In such case, the Contractor shall be paid for all Work executed and any expense sustained plus a reasonable profit. The Public Works Director is authorized to provide written notice of termination on behalf of the City.
- 34.5 If funds to finance this Agreement become unavailable, the City may terminate the Agreement with no less than twenty-four (24) hours' notice in writing to the Contractor. The City will be the final authority as to the availability of funds. The City will pay the Contractor for all work completed prior to any notice of termination.
- 34.6 Where the Contractor's services have been terminated by the City, said termination shall not affect any rights of the City against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the City due the Contractor will not release the Contractor from liability.

35.2 If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) days by the City or an order of court or other public authority, or if the PW Operations Manager fails to act on any application for payment within thirty (30) days after it is submitted, or if the City fails to pay the Contractor any sum approved by the PW Operations Manager within thirty (30) days of its approval and presentation, then the Contractor may, upon seven (7) days written notice to the City, terminate the Agreement and recover from the City payment for all Work executed in accordance with the Agreement plus fair and reasonable overhead and profit. In addition and in lieu of terminating the Agreement, if the PW Operations Manager has failed to act on an application for payment or the City has failed to make payment as aforesaid, the Contractor may, upon seven (7) days' notice to the City and the PW Operations Manager, stop Work until it has been paid all amounts then due.

36 **DISPUTE RESOLUTION.**

36.2 Initial Administrative Resolution: The Contractor may appeal to the Director within fourteen (14) days of a written decision made by the PW Operations Manager. Failure of the Contractor to appeal any decision within this timeframe shall constitute the Contractor's acceptance of the PW Operations Manager's decision and render any claims or disputes related to the decision waived. Such appeals to the Director shall detail the Contract Document provisions that conflict with the PW Operations Manager's decision. The Director shall review each appeal and the Director and Contractor will seek to resolve the appeal through exchange of information and direct negotiations. The Director shall render its decision in writing within thirty (30) days of submission of the appeal; failure of the Director to render a decision within this timeframe shall render the appeal denied.

36.3 Secondary Administrative Resolution: The Contractor may appeal to the City Manager within fourteen (14) days of a written decision made by the Director. Failure of the Contractor to appeal any decision within this timeframe shall constitute the Contractor's acceptance of the Director's decision and render any claims or disputes related to the decision waived. Such appeals to the City Manager shall detail the Contract Document provisions that conflict with the Director's decision. The City Manager and Contractor will seek to resolve the appeal through exchange of information and direct negotiations. The City Manager shall render its decision in writing within forty-five (45) days of submission of the appeal; failure of the City Manager to render a decision within this timeframe shall render the appeal denied. The City Manager's decision shall be the final administrative decision and

is a necessary condition precedent for exhaustion of administrative remedies in order to initiate mediation and a lawsuit based on this Agreement.

36.4 Mediation: For any disputes which remain unsolved and have not been waived, within sixty (60) calendar days after Final Completion of the Work, the parties shall participate in mediation in Alachua County, Florida to address all unresolved disputes. If the Contractor wishes to contest any decision made by the City Manager, Contractor shall request mediation by providing written notice to the PW Operations Manager within thirty (30) days of the City Manager's written decision. Such notice shall detail the Contract Document provision that conflict with the City Manager's decision. Failure of the Contractor to provide such notice shall constitute the Contractor's acceptance of the City Manager's decision and render any claims or disputes related to the decision waived. The Parties shall submit the dispute to mediation prior to filing, and as a condition precedent to, an action in court, which must be filed within thirty (30) days of conclusion of mediation, or the dispute shall be waived. The City shall provide the Contractor a list of three mediators and the Contractor shall select a mediator from the list. The Parties shall each pay one-half of the mediator's fees and costs. Should any dispute not be resolved in mediation, the parties retain all their legal rights and remedies under applicable law, to extent not waived in accordance with this Agreement.

37 **WORKPLACE VIOLENCE.**

37.2 Employees of the Contractor are prohibited from committing any act of workplace violence. Violation may be grounds for termination of the Agreement. Workplace violence means the commission of any of the following acts by a Contractor's employee:

37.1.1 Battery: intentional offensive touching or application of force or violence to another.

37.1.2 Stalking: willfully, maliciously and repeatedly following or harassing another person.

38 **DUTIES AND OBLIGATIONS.** The rights and remedies available hereunder, and in particular without limitation, the warranties, guarantees and obligations imposed upon the Contractor by this Agreement and the rights and remedies available to the City thereunder, shall be in addition to and not a limitation of any otherwise imposed or available by law, special guarantee, or other provisions of this Agreement.

39 **POLLUTION ABATEMENT.** The Contractor shall comply with all federal, state and local laws and regulations controlling pollution of the environment. The Contractor shall take necessary precautions to prevent pollution of soils, creeks, streams, lakes, wetlands and ponds with fuels, oils, bitumens, chemicals and other harmful materials and shall take necessary measures to minimize soil erosion.

40 **INJURY OR DAMAGE TO PEOPLE OR PROPERTY.** Should the City or the Contractor suffer injury or damage to its person or property because of any error, omission or act of the other or of any of their employees or agents or others for whose acts they are legally liable, claims shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.

41 **HEALTH CONSIDERATIONS.** The Contractor shall provide and maintain, in a neat and sanitary condition, such accommodations for the use of its employees as are necessary to comply with the requirements and regulations of the State and Local Boards of Health. The Contractor shall commit no public nuisance.

42 **SEVERABILITY.** It is understood and agreed by the Parties that if any provision of the Agreement shall contravene, or be invalid under the laws of the State of Florida, such contravention or invalidity shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the Parties shall be construed and enforced accordingly.

43 **AMENDMENT.** This Agreement may be amended only by written amendment, work order or work order amendment.

44 **INDEPENDENT CONTRACTOR.** In the performance of this Agreement, the Contractor will be acting in the capacity of an independent Contractor, and not as an agent, employee, partner, joint venture, or associate of the City. The Contractor shall be solely responsible for the means, methods and techniques, sequences and procedures utilized by the Contractor in the full performance of this Agreement. Neither Contractor nor anyone employed by Contractor shall represent, act, purport to act, or to be deemed to be the agent, representative, employee or servant of the City.

45 **GOVERNING LAW AND VENUE.** The laws of the State of Florida, notwithstanding its conflict of laws provisions, shall govern this Agreement. Sole and exclusive venue for all actions arising under this Agreement shall be in Alachua County.

46 **COMPLETE AGREEMENT.** This Agreement contains the sole and entire agreement between the City and the Contractor and supersedes any other written or oral agreements between them not incorporated herein.

47 **NON WAIVER.** The failure of any party to exercise any right in this Agreement will not waive such right in the event of any further default or non-compliance.

48 **SUCCESSORS AND ASSIGNS.** The Contractor shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the City. Subject to the provisions of the preceding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City.

49 **NO THIRD PARTY BENEFICIARIES.** Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed for the uses and purposes therein expressed on the day and year first above-written.

**WATSON CONSTRUCTION  
COMPANY, LLC**

**CITY OF GAINESVILLE**

*Doug Dabney*

*Cynthia W. Curry*

Cynthia Curry (May 8, 2023 10:50 EDT)

Douglas H. Dabney, Owner

Cynthia W. Curry, City Manager

Date: Apr 28, 2023

Date: May 8, 2023

Approved as to Form and Legality

*David C. Schwartz*

David C. Schwartz (May 2, 2023 14:50 EDT)

Assistant City Attorney

## EXHIBIT 1: FEE SCHEDULE

### Base Work

Type/Thickness	Unit	0 – 100	101 – 1000	1,001 – 5,000	5,001 – 10,000	Over 10,000
Mobilization	Lump Sum	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00
After-Hours Mark-up	Percentage	20	20	20	20	20
Type B Stabilization	Square Yards	35.00	32.00	10.00	9.00	8.00
4" Limerock Base	Square Yards	49.00	46.00	20.00	17.00	17.00
6" Limerock Base	Square Yards	52.00	49.00	22.00	20.00	20.00
8" Limerock Base	Square Yards	55.00	52.00	24.00	22.00	22.00
10" Limerock Base	Square Yards	60.00	57.00	29.00	27.00	27.00

### Crack Seal

Crack Seal	Unit	0 – 100	101 – 1000	1,001 – 5,000	5,001 – 10,000	Over 10,000
Mobilization	Lump Sum	2,300.00	2,300.00	2,300.00	2,300.00	2,300.00
After-Hours Mark-up	Percentage	20	20	20	20	20
Spec. 305	Gallons	68.00	68.00	68.00	68.00	68.00

### Milling Asphalt Pavement

Depth	Unit	0 – 25,000	25,001 – 50,000	50,001 – 100,000	100,001 – 250,000	Over 250,000
Mobilization	Lump Sum	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00
After-Hours Mark-up	Percentage	20	20	20	20	20
0.25 Inches	Square Yards	6.00	4.00	4.00	4.00	4.00
0.50 Inches	Square Yards	6.00	4.00	4.00	4.00	4.00
0.75 Inches	Square Yards	7.00	5.00	4.00	4.00	4.00
1.00 Inches	Square Yards	7.00	5.00	4.00	4.00	4.00
1.25 Inches	Square Yards	8.00	6.00	5.00	5.00	5.00
1.5 Inches	Square Yards	8.00	6.00	5.00	5.00	5.00
1.75 Inches	Square Yards	9.00	7.00	6.00	6.00	6.00
2.0 Inches	Square Yards	9.00	7.00	6.00	6.00	6.00
2.25 Inches	Square Yards	10.00	8.00	7.00	7.00	7.00
2.5 Inches	Square Yards	10.00	8.00	7.00	7.00	7.00
2.75 Inches	Square Yards	11.00	9.00	8.00	8.00	8.00
3.0 Inches	Square Yards	12.00	10.00	9.00	9.00	9.00
3.25 Inches	Square Yards	13.00	11.00	10.00	10.00	10.00

Depth	Unit	0 – 25,000	25,001 – 50,000	50,001 – 100,000	100,001 – 250,000	Over 250,000
3.5 Inches	Square Yards	14.00	12.00	11.00	11.00	11.00

**Asphalt Pavement Placement**

Type	Unit	0 – 150	151 - 250	251 – 500	501 – 1000	Over 1,000
Mobilization	Lump Sum	5,000.00	4,000.00	4,000.00	4,000.00	4,000.00
After-Hours Mark-up	Percentage	20	20	20	20	20
Category 1 – SP-9.5	Tons	275.00	240.00	200.00	200.00	200.00
Category 1 – SP-12.5	Tons	275.00	240.00	200.00	200.00	200.00
Category 2 – SP-9.5	Tons	285.00	255.00	215.00	215.00	215.00
Category 2 – SP-12.5	Tons	285.00	255.00	215.00	215.00	215.00
Category 2 – FC-9.5	Tons	285.00	255.00	215.00	215.00	215.00
Category 2 – FC-12.5	Tons	285.00	255.00	215.00	215.00	215.00
Category 2 – SP-9.5 (PG 76-22)	Tons	300.00	270.00	230.00	230.00	230.00
Category 2 – SP-12.5 (PG 76-22)	Tons	300.00	270.00	230.00	230.00	230.00
Category 2 – FC-9.5 (PG 76-22)	Tons	300.00	270.00	230.00	230.00	230.00
Category 2 – FC-12.5 (PG 76-22)	Tons	300.00	270.00	230.00	230.00	230.00
Category 3 – SP-9.5	Tons	290.00	260.00	220.00	220.00	220.00
Category 3 – SP-12.5	Tons	290.00	260.00	220.00	220.00	220.00
Category 3 – FC-9.5	Tons	290.00	260.00	220.00	220.00	220.00
Category 3 – FC-12.5	Tons	290.00	260.00	220.00	220.00	220.00
Category 3 – SP-9.5 (PG 76-22)	Tons	305.00	275.00	235.00	235.00	235.00
Category 3 – SP-12.5 (PG 76-22)	Tons	305.00	275.00	235.00	235.00	235.00
Category 3 – FC-9.5 (PG 76-22)	Tons	305.00	275.00	235.00	235.00	235.00
Category 3 – FC-12.5 (PG 76-22)	Tons	305.00	275.00	235.00	235.00	235.00

**Concrete Work**

Type	Unit	0 – 150	151 - 250	251 – 500	501 – 1000	Over 1,000
Mobilization	Lump Sum	2,500.00	2,500.00	2,500.00	2,500.00	2,500.00

Type	Unit	0 – 150	151 - 250	251 – 500	501 – 1000	Over 1,000
After-Hours Mark-up	Percentage	25	25	25	25	25
4" Thick Sidewalk & Driveways	Square Yards	165.00	165.00	160.00	160.00	160.00
6" Thick Sidewalk & Driveways	Square Yards	245.00	245.00	240.00	240.00	240.00
8" Thick Sidewalk & Bus Stops	Square Yards	300.00	300.00	295.00	295.00	295.00
6" Thick Concrete Curb Ramps	Square Yards	325.00	325.00	320.00	320.00	320.00
Detectable Warning Surface	Square Foot	60.00	60.00	60.00	60.00	60.00
Type A Curb	Linear Foot	60.00	50.00	45.00	45.00	45.00
Type B Curb	Linear Foot	60.00	50.00	45.00	45.00	45.00
Type D Curb	Linear Foot	60.00	50.00	45.00	45.00	45.00
Type E Curb	Linear Foot	60.00	50.00	45.00	45.00	45.00
Type F Curb	Linear Foot	60.00	50.00	45.00	45.00	45.00
Drop Curb	Linear Foot	60.00	50.00	45.00	45.00	45.00
Valley Gutter	Linear Foot	70.00	60.00	55.00	55.00	55.00
Removal of Existing Concrete	Square Yards	90.00	90.00	75.00	65.00	60.00

**Pavement Markings – (White or yellow if applicable)**

Long Line	Unit	0 – 5	5 - 10	10 – 25	25 – 50	Over 50
6" Solid Paint	Gross Mile	3,267.00	3,267.00	3,067.00	3,067.00	3,067.00
6" Skip 10'-30' Paint	Gross Mile	3,267.00	3,267.00	3,067.00	3,067.00	3,067.00
6" Solid Thermo	Gross Mile	9,920.00	9,920.00	8,920.00	8,920.00	8,920.00
6" Skip 10'-30' Thermo	Gross Mile	9,920.00	9,920.00	8,920.00	8,920.00	8,920.00

Removal – Grinding	Unit	0 – 150	151 - 250	251 – 500	501 – 1000	Over 1,000
Mobilization	Lump Sum	2,250.00	2,250.00	2,250.00	2,250.00	2,250.00
Painted Symbols and Messages	Square Foot	4.50	4.00	4.00	4.00	4.00
Painted Stripe	Square Foot	4.50	4.00	4.00	4.00	4.00
Thermoplastic Symbols and Messages	Square Foot	4.50	4.00	4.00	4.00	4.00
Thermoplastic Stripe	Square Foot	4.50	4.00	4.00	4.00	4.00

<b>Removal – Water Blasting</b>	<b>Unit</b>	<b>0 – 150</b>	<b>151 - 250</b>	<b>251 – 500</b>	<b>501 – 1000</b>	<b>Over 1,000</b>
Mobilization	Lump Sum	6,200.00	6,200.00	6,200.00	6,200.00	6,200.00
Painted Symbols and Messages	Square Foot	12.50	12.00	12.00	12.00	12.00
Painted Stripe	Square Foot	12.50	12.00	12.00	12.00	12.00
Thermoplastic Symbols and Messages	Square Foot	12.50	12.00	12.00	12.00	12.00
Thermoplastic Stripe	Square Foot	12.50	12.00	12.00	12.00	12.00

<b>After-Hours Mark-up</b>	<b>Percentage</b>	25	25	25	25	25
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**Exhibit 2 – Work Order Form**

**WORK ORDER NO:**

**PROJECT DESCRIPTION:**

**City:** City of Gainesville, a municipal corporation of State of Florida.

**Date Issued:**

**CONTRACTOR:**

Execution of the Work Order by the City shall serve as authorization for the Contractor to provide for the above project, Contractor services as set out in the Scope of Work attached as Exhibit "A," to that certain Agreement of \_\_\_\_\_ dated \_\_\_\_\_ between the City and the Contractor and further delineated in the specifications, conditions, and requirements stated in the following listed documents which are attached hereto and made a part hereof.

**ATTACHMENTS:**

Drawings/Plans/Specifications

Scope of Work dated \_\_\_\_\_

Special Conditions

\_\_\_\_\_

The Contractor shall provide said Work pursuant to this Work Order, its attachments and the above-referenced Agreement, which is incorporated herein by reference as if it had been set out in its entirety. Whenever the Work Order conflicts with said Agreement, the Agreement shall prevail.

**TIME FOR COMPLETION:** The Work authorized by this Work Order shall be commenced upon the date written above. Substantial Completion shall be met by \_\_\_\_\_ and Final Completion shall be met by \_\_\_\_\_.

**METHOD OF COMPENSATION:** The Contractor shall perform all Work require by this Work Order for a sum not exceeding \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_). The Contractor's compensation shall be based on the actual Work required by this Work Order. All reimbursable expenses and allowances are itemized in Exhibit "A"

The City shall make payment to the Contractor in strict accordance with the payment terms of the above-referenced Agreement.

It is expressly understood by the Contractor that the City, prior to execution of the Work Order, reserves the right to authorize a party other than the Contractor to perform the services called for under this Work Order if it is determined that to do so is in the best interest of the City.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Work Order on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purposes stated herein.

**WITNESS**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_

**CONTRACTOR:**

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

Title: \_\_\_\_\_  
Print Name and Title

Date: \_\_\_\_\_

**CITY**

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY**

\_\_\_\_\_  
City Attorney

**EXHIBIT 3: AMENDMENT TO WORK ORDER**

WORK ORDER NO.:

AMENDMENT NO.:

Project Description:

City: City of Gainesville, Florida

Date Issued:

Contractor:

<b>Original Work Order Description:</b>
<b>Amendment Revisions:</b>

Original Work Order Price:	
Total of Prior Approved Changes	
Amount of this Change in Work Order Add or (deduct)	
New Work Order Price with This Amendment:	

Original Substantial Completion Date:

Original Final Completion Date:

New Substantial Completion Date:

New Final Completion Date:

**CITY:**

**CONTRACTOR:**

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

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

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

**Print Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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

**Date:** \_\_\_\_\_

**EXHIBIT 4: PAYMENT BOND FORM**

**CONTRACTOR (PRINCIPAL)**

COMPANY (LEGAL NAME):

PRINCIPAL BUSINESS ADDRESS (No PO Box):

TELEPHONE NUMBER:

**SURETY**

COMPANY (LEGAL NAME):

PRINCIPAL BUSINESS ADDRESS (No PO Box):

TELEPHONE NUMBER:

**OWNER (OBLIGEE)**

NAME: City of Gainesville, Florida, Municipal Corporation

PRINCIPAL BUSINESS ADDRESS: 200 E University Avenue, Gainesville, Florida 32601

TELEPHONE NUMBER: 352-334-5000

**CONTRACT DETAILS**

CONTRACT NO.:

DATE EXECUTED:

AMOUNT:

GENERAL DESCRIPTION:

STREET ADDRESS OF PROJECT:

PO NO., RFP, OR BID NO.:

**BOND**

BOND NUMBER:

DATE:

AMOUNT:

**KNOW ALL MEN BY THESE PRESENTS:**

That Principal, hereinafter called Contractor, and Surety, as identified above, are bound to City of Gainesville, Florida, as Obligee, and hereinafter called the City, in the amount identified above, for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

This payment bond is executed pursuant to §255.05, Florida Statutes, and claimants must comply with the notice and time limitations of §255.05(2) and §255.05(10), Florida Statutes.

WHEREAS, Contractor has by written Contract entered into a Contract, identified above, with the City, which Contract Documents are by reference made part hereof, and for the purposes of this Bond are hereafter referred to as the "Contract."

THE CONDITION OF THIS BOND is that if Contractor promptly makes payments to all persons defined in §713.01, Florida Statutes, who furnish labor, materials and supplies used directly or indirectly by Contractor in the performance of the Contract; then CONTRACTOR'S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT.

The surety hereby waives notice of and agrees that any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect surety's obligation under this bond.

The provisions of this bond are subject to the notice and time limitations of §255.05(2) and §255.05(10). In no event will the Surety be liable in the aggregate to claimants for more than the penal sum of this Payment Bond, regardless of the number of suits that may be filed by claimants.

**SIGNATURES NEXT PAGE**

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CONTRACTOR (PRINCIPAL)**

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

Witnesses as to Contractor

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

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

STATE OF \_\_\_\_\_

CITY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced \_\_\_\_\_ as identification.

Notary Public (Signature) : \_\_\_\_\_

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

My Commission Expires: \_\_\_\_\_ (AFFIX NOTARY SEAL)

**SURETY**

SIGNATURE: \_\_\_\_\_

SEAL

PRINTED NAME AND TITLE: ATTORNEY IN FACT

**EXHIBIT 5: PERFORMANCE BOND FORM**

**CONTRACTOR (PRINCIPAL)**

COMPANY (LEGAL NAME):  
PRINCIPAL BUSINESS ADDRESS (No PO Box):  
TELEPHONE NUMBER:

**SURETY**

COMPANY (LEGAL NAME):  
PRINCIPAL BUSINESS ADDRESS (No PO Box):  
TELEPHONE NUMBER:

**OWNER (OBLIGEE)**

NAME: City of Gainesville, Florida, Municipal Corporation  
PRINCIPAL BUSINESS ADDRESS: 200 E University Avenue, Gainesville, Florida 32601  
TELEPHONE NUMBER: 352-334-5000

**CONTRACT DETAILS**

CONTRACT NO.:  
DATE EXECUTED:  
AMOUNT:  
GENERAL DESCRIPTION:  
STREET ADDRESS OF PROJECT:  
PO NO., RFP, OR BID NO.:

**BOND**

BOND NUMBER:  
DATE:  
AMOUNT:

**KNOW ALL MEN BY THESE PRESENTS:**

That Principal, hereinafter called Contractor, and Surety, as identified above, are bound to City of Gainesville, Florida, as Obligee, and hereinafter called the City, in the amount identified above, for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written Contract entered into a Contract, identified above, with City, which Contract Documents are by reference made a part hereof, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

1. performs the Contract between Contractor and City, at the times and in the manner prescribed in the Contract; and
2. pays City all losses, damages, including liquidated damages and damages caused by delay, expenses, costs and attorney's fees including appellate proceedings, that City sustains as a result of default by Contractor under the Contract; and
3. performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract; then THIS BOND IS VOID, OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.

Whenever Contractor shall be, and is declared by City to be, in default under the Contract, and City having performed City's obligations there under, the Surety may promptly remedy the default, or shall promptly:

1. complete the Contract in accordance with its terms and conditions; or
2. obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if City elects, upon determination by City and Surety jointly of the lowest responsible bidder, arrange for a Contract between such Bidder and City, and make available as work progresses sufficient funds, paid to City, to pay the cost of completion and other costs and damages for which the Surety may be liable hereunder.

No right of action shall accrue on this bond to or for the use of any person of corporation other than City named herein.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other Work to be performed hereunder, or the specifications referred to therein shall in any way affect its obligations under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to Work or to the specifications.

This instrument shall be construed in all respects as a common law bond. It is expressly understood that the time provisions and statute of limitations under §255.05, Florida Statutes, shall not apply to this bond.

In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance Bond regardless of the number of suits that may be filed by Obligee.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CONTRACTOR (PRINCIPAL)**

Signed, sealed and delivered  
in the presence of:

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

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

Witnesses as to Contractor

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

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

STATE OF \_\_\_\_\_

CITY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced \_\_\_\_\_ as identification.

Notary Public (Signature) :\_\_\_\_\_

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

My Commission Expires: \_\_\_\_\_ (AFFIX NOTARY SEAL)

**SURETY**

SIGNATURE: \_\_\_\_\_

SEAL

PRINTED NAME AND TITLE: ATTORNEY IN FACT

**EXHIBIT 6: CONTRACTOR'S FINAL PAYMENT AFFIDAVIT FORM**

STATE OF FLORIDA

CITY OF \_\_\_\_\_

Before me, the undersigned authority, personally appeared \_\_\_\_\_, who after being duly sworn, deposes and says:

(1) He or she is the (title) \_\_\_\_\_, of \_\_\_\_\_, which does business in the State of Florida, hereinafter referred to as the "Contractor."

(2) Contractor, pursuant to that certain Work Order dated \_\_\_\_\_ ("Contract") with the City of Gainesville, Florida, a municipal corporation and political subdivision of the State of Florida, hereinafter referred to as the "Owner," has furnished or caused to be furnished labor, materials, and services for \_\_\_\_\_, as more particularly set forth in said Contract.

(3) This affidavit is executed by the Contractor in accordance with §713.06 of the Florida Statutes for the purposes of obtaining final payment from the Owner in the amount of \$\_\_\_\_\_.

(4) Contractor certifies, represents and warrants that it has paid all persons defined in §713.01, Florida Statutes, who furnished labor, services, or materials for the prosecution of the Work provided for in the Contract ("Claimants"), all amounts owed them from any previous payments received by Contractor from the Owner and has not withheld any such amounts.

(5) Contractor certifies, represents and warrants that all Work to be performed under the Contract has been fully completed, and all Claimants have been paid in full.

(6) In accordance with the Contract Documents and in consideration of \$\_\_\_\_\_ paid, Contractor releases and waives for itself and all Claimants, including their successors and assigns, all claims demands, damages, costs and expenses, whether in contract or in tort, against Owner relating in any way to the performance of the Contract.

(7) Contractor certifies, represents and warrants for itself and its subcontractors, materialmen, successors and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for which Owner might be sued or for which a lien or a demand against any payment bond might be filed, have been fully satisfied and paid.

**Contractor:**

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Witnesses

[Corporate Seal]

STATE OF \_\_\_\_\_

CITY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced \_\_\_\_\_ as identification.

Notary Public (Signature) \_\_\_\_\_

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

My Commission Expires: \_\_\_\_\_

(AFFIX NOTARY SEAL)

\_\_\_\_\_

**EXHIBIT 7: FINAL PAYMENT BOND WAIVER FORM**

**WAIVER OF RIGHT TO CLAIM AGAINST THE PAYMENT BOND (FINAL PAYMENT)**

**OWNER:** City of Gainesville, Florida, a municipal corporation and political subdivision of the State of Florida

**CONTRACTOR:**

**PROJECT:** Work Order dated \_\_\_\_\_ (“Contract”) for labor, materials, and services for \_\_\_\_\_.

The undersigned Claimant, for itself and its successors and assigns, and in consideration of the final payment made in the amount of \$\_\_\_\_\_, hereby waives and releases its right to claim against the payment bond, and further waives, releases and discharges the Owner and Contractor from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, for labor, services or materials furnished through \_\_\_\_\_(insert date) to\_\_\_\_\_, on the job of the City of Gainesville, Florida, a municipal corporation and political subdivision of the State of Florida, for improvements associated with the above referenced Project.

DATED ON \_\_\_\_\_.

Claimant: \_\_\_\_\_

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

(Name)

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

(Print Title)

STATE OF \_\_\_\_\_

CITY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_,

a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced  
\_\_\_\_\_ as identification.

Notary Public (Signature) \_\_\_\_\_

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

My Commission Expires: \_\_\_\_\_

(AFFIX NOTARY SEAL)

\_\_\_\_\_

**EXHIBIT 8: CERTIFICATE OF INSURANCE**





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/27/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Arthur J. Gallagher Risk Management Services, Inc. 4350 W Cypress St Suite 300 Tampa FL 33607		<b>CONTACT NAME:</b> Jacquie Monroe	
		<b>PHONE (A/C, No, Ext):</b> 727-797-6250	<b>FAX (A/C, No):</b>
		<b>E-MAIL ADDRESS:</b> CertRequests@aig.com	
		<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b> Watson Construction Company, LLC 940 NW 247th Drive Newberry FL 32669		<b>INSURER A:</b> Zenith Insurance Company	13269
WATSCON-01		<b>INSURER B:</b>	
		<b>INSURER C:</b>	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: 1695788367

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) if yes, describe under DESCRIPTION OF OPERATIONS below			Z133881307	1/1/2023	1/1/2024	X PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Excluded officer-Douglas H. Dabney (managing member), Tammy Dabney (managing member)

**CERTIFICATE HOLDER****CANCELLATION**

City of Gainesville

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Matt Doyle*