

**SECTION 00500
AGREEMENT**

**_____ / THE CITY OF PALM COAST
AGREEMENT RELATING TO CONSTRUCTION OF
FINISHED WATER & CONCENTRATE MAINS
ITB-U-07-12**

THIS AGREEMENT is dated as of the _____ day of _____, 20____ by and between _____, duly authorized to conduct business in the State of Florida, whose address is _____, hereinafter called the "CONTRACTOR", and THE CITY OF PALM COAST, Florida, whose address is 2 Commerce Blvd., Palm Coast, Florida, 32164, hereinafter referred to as the "CITY". The CONTRACTOR and the CITY, in consideration of the mutual covenants hereinafter set forth, agree as follows:

WITNESSETH:

Section 1. Work. The CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work which generally encompasses the City's project is generally described as follows:

Construction of Finished Water & Concentrate Mains

Section 2. Engineer.

(a) ENGINEER OF RECORD as named in the Contract Documents shall mean

CPH Engineers, Inc. and Gregory L. Peugh, P.E. _____

(Firm and Engineer)

(b) "CEI" is The City of Palm Coast City Engineer or the CITY's contracted consultant for construction, engineering and inspection ("CEI") services.

Section 3. Contract Time.

(a) All provisions regarding Contract Time are essential to the performance of this Agreement.

(b) The Work shall be substantially completed as described in subsection 14.13 of the General Conditions, within 150 calendar days after the date when the Contract Time begins to run as provided in subsection 2.2 of the General Conditions. The Work shall be finally completed, ready for Final Payment in accordance with subsection 14.9 of the General Conditions, within thirty (30) calendar days after the actual date of Substantial Completion.

(c) The parties acknowledge that the Contract Time provided in this Section includes

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consideration of adverse weather conditions common to the Palm Coast, Florida area including, but not limited to, the possibility of hurricanes and tropical storms.

(d) In the event that the Work requires phased construction, then multiple points of Substantial Completion may be established in Supplementary Conditions.

Section 4. Contract Price.

(a) The CITY shall pay the CONTRACTOR for performance of the Work in accordance with the Contract Documents on the basis of the Total Bid (original Contract Price). The CONTRACTOR's total compensation is _____ subject only to increases or decreases made in strict conformance with the Contract Documents.

(b) The CONTRACTOR agrees to accept the Contract Price as full compensation for accomplishing the City's project, furnishing all Materials, and performing all Work embraced in the Contract Documents; for all loss or damage arising out of performance of the Work and from the action of the elements or from any unforeseen or unknown difficulties or obstructions which may arise or be encountered in the prosecution of the Work until the Final Acceptance; and for all risks of every description connected with the Work.

(c) The CONTRACTOR acknowledges that the CONTRACTOR has fully and completely studied, considered, and included in the CONTRACTOR's Total Bid (original Contract Price) all costs of any nature relating to: (1) performance of the Work under Palm Coast, Florida area weather conditions; (2) applicable law, licensing, and permitting requirements; (3) the Project site conditions including, but not limited to, subsurface site conditions; (4) the terms and conditions of the Contract Documents including, but not limited to, the indemnification and no damage for delay provisions of the Contract Documents.

(d) The CONTRACTOR acknowledges that performance of the Work may involve significant Work adjacent to, above, and in close proximity to Underground Facilities including utilities which will require the support of active utilities, as well as, the scheduling and sequencing of utility installations, and relocations (temporary and permanent) by the CONTRACTOR.

(e) In addition to the acknowledgments previously made, the CONTRACTOR acknowledges that the CONTRACTOR's Total Bid (original Contract Price) specifically considered and relied upon the CONTRACTOR's own study of Underground Facilities, utilities in their present, relocated (temporary and permanent) and proposed locations, and conflicts relating to utilities and Underground Facilities.

(f) The CONTRACTOR acknowledges that the CONTRACTOR's Total Bid (original Contract Price) considered and included all of the CONTRACTOR's costs relating to the CONTRACTOR's responsibilities to coordinate and sequence the Work of the CONTRACTOR with the work of the CITY with its own forces, if any, the work of utility contractors and the work of others, if any, at the Project site.

Section 5. Payment Procedures.

(a) The CONTRACTOR shall submit Applications for Payment in accordance with Section 14 of the General Conditions. Applications for Payment will be processed by the CITY or its designee as

provided in the General Conditions.

(b) Progress Payments. The CITY shall make progress payments on the basis of the CONTRACTOR's Applications for Payment as recommended by the CITY's staff or consultants, in accordance with Section 14 of the General Conditions.

(c) Final Payment. Upon Final Completion and acceptance of the Work in accordance with subsection 14.9.1 of the General Conditions, the CITY shall pay the remainder of the Contract Price as provided in subsection 14.9.1.

Section 6. Additional Retainage for Failure to Maintain Progress on the Work.

(a) Retainage under the Contract Documents is held as collateral security to secure completion of the Work.

(b) In the event that the CONTRACTOR fails to physically mobilize to the Work site as required by Section 6.19 of the General Conditions, the CITY may withhold additional retainage to secure completion of the Work in an amount equal to the product of the number of Days after the 31st day following the Date of Commencement of Contract Time and the liquidated damage amount for Substantial Completion set forth in Section 9 of this Agreement. The additional retainage shall be withheld from the initial and each subsequent Progress Payment. The additional retainage held under this Subsection shall be released to the CONTRACTOR in the next Progress Payment following the ENGINEER's approval of a supplementary Progress Schedule demonstrating that the requisite progress will be regained and maintained as required by Section 6.19.2 of the General Conditions.

(c) The CITY may withhold additional retainage in anticipation of liquidated damages equal to the product of the number of days after the scheduled Contract Time (Substantial Completion or Final Completion) and the amount of liquidated damages as set forth in Section 9 of this Agreement if the CONTRACTOR is behind schedule and it is anticipated by the CITY that the Work will not be completed within the Contract Time. The additional retainage under this Subsection may, at the CITY's discretion, be withheld from subsequent Progress Payments. Any additional retainage held under this Subsection shall be released to the CONTRACTOR in the next Progress Payment following the CITY's approval or the approval of the CITY's Engineer or Consultant of a supplemental Progress Schedule demonstrating that the requisite progress will be regained and maintained as required by Section 6.19.2 of the General Conditions.

Section 7. Contractor's Representations. In order to induce the CITY to enter into this Agreement, the CONTRACTOR makes the following representations:

(a) The CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, locality, weather, all applicable law and with all local conditions and Federal, State and local laws, utility locations, ordinances, rules, policies and regulations that in any manner may affect cost, progress or performance of the Work.

(b) The CONTRACTOR has studied carefully and considered in its Bid all reports of

investigations and tests of subsurface and physical conditions of the site affecting cost, progress, scheduling, or performance of Work.

(c) The CONTRACTOR has studied carefully and considered in its Bid the Plans and Specifications, performed necessary observations, examinations, and studied the physical conditions at the site related to Underground Facilities, utility installations, conflicts, re-locations (temporary and permanent) and all other Underground Facilities and utility related conditions of the Work and site that may affect cost, progress, scheduling, or any aspect of performance of the Work and that its Bid reflects all such conditions. The CONTRACTOR, by submitting its Bid and executing this Agreement acknowledges the constructability of the Work under the Plans and Specifications. The CONTRACTOR, by its study, excludes and releases the CITY from any implied warranties including, but not limited to, the "Spearin Doctrine", that the Plans and Specifications are adequate to perform the Work.

(d) The CONTRACTOR has made or caused to be made examinations, investigations and tests and studies as it deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by the CONTRACTOR for such purposes.

(e) The CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

(f) The CONTRACTOR has given the CITY or its Engineer or Consultant written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by the CITY is acceptable to the CONTRACTOR.

(g) The CONTRACTOR declares and agrees that the approval or acceptance of any part of the Work or Material by the CITY, its Engineer, or Consultant(s) or any agent relating to compliance with the Contract Documents shall not operate as a waiver by the CITY of strict compliance with the terms and conditions of the Contract Documents.

(h) The CONTRACTOR declares and agrees that the CITY may require the CONTRACTOR to repair, replace, restore or make all things comply with the Contract Documents including, but not limited to, all Work or Materials which within a period of two (2) year(s) from Acceptance by the CITY are found to be Defective or fail in any way to comply with the Contract Documents. The CONTRACTOR acknowledges that the above two (2) year(s) repair, replacement and restoration period is separate from and additional to the CONTRACTOR's warranty that the Work has been completed in compliance with the Contract Documents. The two (2) year(s) repair, replace and restoration period is not a limitation upon the CONTRACTOR's other warranties or Material and Workmanship Bond.

(i) The CONTRACTOR's resident Superintendent at the Work site shall be: _____ and this Superintendent only shall be utilized by the CONTRACTOR unless otherwise approved by the CITY's Project Manager and following the procedure indicated in the

General Conditions.

(j) The CONTRACTOR has studied carefully and considered all permit requirements related to performance of the Work. The CONTRACTOR declares and agrees that all costs related to performing the Work in compliance with the requirements of all permits at the Contract Price are included in the Contract Price. The CONTRACTOR agrees that the CONTRACTOR shall be solely responsible for payment of all fines and penalties of any nature assessed to the CONTRACTOR or CITY or both by any governmental entity, district, authority or other jurisdictional entity relating to all permits required for performance of the Work.

(k) The CONTRACTOR acknowledges that the performance of the Work under the Contract Documents fulfills a public purpose. To that end, the CONTRACTOR agrees to respond to citizen complaints related to alleged damage caused by the CONTRACTOR's performance of the Work within two (2) days of receipt of the Complaint from citizens, the CITY or the CITY's Engineer or Consultant(s). The CONTRACTOR shall utilize the attached "Report of Unsatisfactory Materials and/or Service" form to respond separately to each Complaint. When a Complaint is brought to the CONTRACTOR by a citizen, the CONTRACTOR shall identify the citizen and street address in the "Statement of Problem". Responses and action taken by the CONTRACTOR shall specifically identify the problem specific actions taken. Generic statements such as "addressed the problem" are unacceptable. If the CONTRACTOR fails to respond within two (2) days, then the CITY may take corrective action and deduct the actual costs of corrective action from subsequent Progress Payments or the retainage.

(l) The CONTRACTOR acknowledges that the CITY owned property obtained for performance of the Work within the Project limits may include temporary construction easements. In the event that the CONTRACTOR fails to perform the Work within the Contract Time, then the CONTRACTOR shall be solely responsible for payment of all costs for additional or extended temporary construction easements. The CONTRACTOR authorizes the CITY to deduct the actual costs of additional or extended temporary construction easements from subsequent Progress Payments or the retainage.

Section 8. Contract Documents. The Contract Documents which comprise the entire agreement between the CITY and the CONTRACTOR are made a part hereof and consist of the following:

- (a) This Agreement.
- (b) Addenda, if any.
- (c) The Bid documents.
- (d) American's With Disabilities Act Affidavit.
- (e) Performance Bond.
- (f) Payment Bond.
- (g) Material and Workmanship Bond.
- (h) Specifications.
- (i) Technical Specifications Provided in these Contract Documents.
- (j) General Conditions.
- (k) Supplementary Conditions.
- (l) Notice to Proceed.
- (m) Change Orders.

- (n) Certificate of Substantial Completion.
- (o) Certificate of Final Inspection.
- (p) Certificate of Engineer.
- (q) Certificate of Final Completion.
- (r) CONTRACTOR's release.
- (s) Drawings and Plans.
- (t) Supplemental Agreements.
- (u) CONTRACTOR's Waiver of Lien (Partial).
- (v) CONTRACTOR's Waiver of Lien (Final and Complete).
- (w) Subcontractor/Vendor's Waiver of Lien (Final and Complete).
- (x) Consent of Surety To Final Payment.
- (y) Instructions to Bidders.
- (z) Contractor's Insurance Requirements, as set forth in the Bid Documents, etc. Certificate and Insurance Policies.

There are no Contract Documents other than those listed above in this Section 8. The Contract Documents may only be altered, amended or repealed by a modification as provided in the General Conditions.

Section 9. Liquidated Damages.

(a) The CITY and the CONTRACTOR recognize that time is essential to the performance of this Agreement and the CONTRACTOR recognizes that the CITY and its public will suffer financial loss if the Work is not substantially completed as described in subsection 14.13 of the General Conditions within the time specified below, plus any extensions thereof allowed in accordance with Section 12 of the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving, in a legal or alternative dispute resolution proceeding, the damages resulting from inconvenience to the public and the loss of recreational opportunities suffered by the CITY if the Work is not completed on time. Accordingly, the CONTRACTOR and the CONTRACTOR's Surety agree to pay the CITY as liquidated damages, and not as a penalty, FIVE HUNDRED AND 00/100 DOLLARS (\$500.00) per day for each day the CONTRACTOR exceeds the Contract Time for Substantial Completion until the Work is substantially complete. It is agreed that if this Work is not finally completed in accordance with the Contract Documents, the CONTRACTOR shall pay the CITY as liquidated damages for delay, and not as a penalty, one-fourth (1/4) of the rate set forth above.

(b) The CONTRACTOR shall pay or reimburse, in addition to the liquidated damages specified herein, the CITY's actual damages which may include, but are not limited to, expenses for engineering fees and inspection costs arising from the CONTRACTOR's failure in meeting either or both the substantial completion and final completion dates.

(c) The liquidated damages provided in this Section are intended to apply even if the CONTRACTOR is terminated, in default, or if the CONTRACTOR has abandoned the Work.

Section 10. Miscellaneous.

(a) Terms used in this Agreement which are defined in Section 1 of the General Conditions shall have the meanings indicated in the General Conditions.

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

(c) The CITY and the CONTRACTOR each binds themselves and their successors, assigns and legal representatives to the other party hereto, and its successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

Section 11. Contractor's Specific Consideration. In consideration of the CONTRACTOR's indemnity agreements as set out in the Contract Documents, the CITY specifically agrees to pay the CONTRACTOR the sum of TEN AND NO/100 DOLLARS (\$10.00). The CONTRACTOR acknowledges receipt of the specific consideration is included in the original Contract Price allocated by the CONTRACTOR among all pay items - receipt of which is acknowledged.

Section 12. Notices. Whenever either party desires to give notice until the other including, but not limited to, Contract Claims, it must be given by written notice, hand delivered, signed and dated for receipt or sent by certified mail, United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

FOR THE CITY:

Mr. Brian Rothwell
Purchasing and Grants Coordinator
2 Commerce Boulevard
Palm Coast, Florida 32164

FOR THE CONTRACTOR:

Section 13. Conflict of Interest.

(a) The CONTRACTOR agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the CITY or which would violate or cause others to violate the provisions of Part III, Chapter 112, *Florida Statutes*, relating to ethics in government.

(b) The CONTRACTOR hereby certifies that no officer, agent or employee of the CITY has any material interest (as defined in Section 112.312(15), *Florida Statutes*, AS OVER 5%) either directly or indirectly, in the business of the CONTRACTOR to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to Section 216.347, *Florida Statutes*, the CONTRACTOR hereby agrees that monies received from the CITY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other State or Federal Agency.

Section 14. Material Breaches of Agreement.

(a) The parties recognize that breaches of the Contract documents may occur and that remedies for those breaches may be pursued under the Contract Documents. The parties further recognize that the safety of the public is of paramount concern. Therefore, the parties agree that any breach of the Contract Documents related to life safety shall be considered a material breach of the Contract Documents.

(b) Upon a material breach of the Contract Documents related to life safety, as determined by the CITY or its City Engineer or Consultant(s), the CITY shall issue a stop work order suspending the Work or any specific portion of the Work until the conditions are corrected. If the life safety conditions giving rise to the stop work order are not corrected within a reasonable time, as determined by the CITY, then the material breach shall entitle the CITY to terminate this Agreement. The recognition of breaches of the provisions of the Contract Documents related to life safety as material breaches shall not be construed as a limitation on other remedies for breaches of the Contract Documents.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: the CITY through its City Council taking action on the ___ day of _____, 2006, and the CONTRACTOR signing by and through its duly authorized corporate officer having the full and complete authority to execute same.

ATTEST:

By: _____

Date: _____

ATTEST:

CITY OF PALM COAST

Clare M. Hoeni, City Clerk

By: _____
Jim Landon, City Manager

Date: _____

Department Head

Finance

City Attorney, Lonnie Groot

END OF SECTION