**AGREEMENT BETWEEN**

**CITY OF PALM COAST AND**

**ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**

**TO COLLECT AND PROCESS LIDAR DATA FOR THE**

**CITY OF PALM COAST**

**THIS AGREEMENT** is made by and between the CITY OF PALM COAST, FLORIDA (hereinafter referred to as “CITY”), a municipal corporation of the State of Florida, whose address is 160 Lake Ave., Suite 223, Palm Coast, Florida 32164, and ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, (hereinafter referred to as “DISTRICT”), a political subdivision of the State of Florida, whose address is 4049 Reid Street, Palatka, Florida 32178 (collectively referred to as “PARTIES”).

***WITNESSETH:***

**WHEREAS,** the waters of the state of Florida are among its basic resources, and it has been declared to be the policy of the Legislature to promote conservation, development, and proper utilization of surface and ground water; and

**WHEREAS,** the PARTIES have pledged to cooperate on collecting and processing LiDAR (Light Detection and Ranging) data important to the CITY to evaluate surface and ground water (“LiDAR Project”); and

**WHEREAS**, LiDAR is a remote sensing method that uses light in the form of a pulsed laser to measure ranges to generate topographical data; and

**WHEREAS**, the DISTRICT currently manages the services of a professional surveying and mapping firm to provide digital topographic data derived from LiDAR for areas of interest identified within or adjacent to the DISTRICT’s boundaries pursuant to a contract with Dewberry Consultants, LLC (“DEWBERRY”) approved by the DISTRICT in October 2016; and

**WHEREAS**, the CITY anticipates that the standards and specifications utilized through the Statement of Work, attached as Exhibit “A” and incorporated herein by this reference (“SOW”) will be critical to ensure future CITY modeling efforts use consistent and accurate data; and

**WHEREAS,** the PARTIES have determined that the LiDAR Project serves a CITY and DISTRICT public purpose; and

**WHEREAS**, the DISTRICT is legally obligated to ensure that the LiDAR Project, including the expenditures, is in accordance with the terms and conditions of the SOW; and

**WHEREAS**, the CITY desires to ensure that the LiDAR Project, including the expenditures, is in accordance with the terms and conditions of the SOW, and the terms of this Agreement; and

**WHEREAS**, the PARTIES desire to work together to ensure completion of the LiDAR Project, to administer the funds from the CITY, and to set forth their relative rights and responsibilities for implementation of the LiDAR Project; and

**WHEREAS**, upon completion of the LiDAR Project, the deliverables will be owned and maintained by the CITY; and CITY grants to the DISTRICT a royalty-free, non-exclusive, irrevocable license to all deliverables generated under this Agreement for use by the DISTRICT for the DISTRICT’s own purposes.

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES agree as follows:

**SECTION 1. RECITALS.** The above recitals are true and correct and form a material part of this Agreement upon which the PARTIES have relied.

**SECTION 2. PURPOSE.** The purpose of this Agreement is to establish the PARTIES’ respective responsibilities for completing the LiDAR Project and for complying with the SOW requirements. The purpose of the LiDAR Project is to acquire and calibrate laser points collected during the surveying of the Area of Interest (AOI) covering 144.38 square miles as detailed in the SOW. The DISTRICT is currently managing other projects of similar scope and will manage the LiDAR Project.

**SECTION 3. CITY RESPONSIBILITIES.**

(a) The CITY will provide a final Area of Interest (AOI) figure that describes the LiDAR collection area.

(b) The CITY shall bear all costs and expenses associated with activities undertaken pursuant to the SOW with the funding provided under the terms of the SOW.

(c) The CITY shall not have any jurisdiction or control over the DISTRICT’s activities, except as specifically stated in this Agreement.

(d) The DISTRICT acknowledges that payment for the services of its consultants and vendors performing work for the LiDAR Project shall be limited to the reimbursement of expenditures authorized by, and for the amounts set forth in, the SOW. Three separate payments will be made to the DISTRICT in accordance with the payment schedule set forth in the SOW. Payments must be made to the DISTRICT within twenty (20) business days of receipt of a proper invoice. If the CITY has a dispute about a charge on its invoice, it must contact the DISTRICT within ten (10) days of the date of the invoice.

**SECTION 4. DISTRICT RESPONSIBILITIES.**

(a) The DISTRICT will cooperate with the CITY to ensure the PARTIES maintain compliance with the terms of the SOW and will manage, facilitate and oversee the LiDAR Project, specifically including management of any and all work performed by DEWBERRY, with respect to the administration of the SOW requirements.

(b) The DISTRICT shall not have any jurisdiction or control over the CITY’s activities, except as specifically stated in this Agreement.

(c) The DISTRICT acknowledges that payment for the services of DEWBERRY performing work for the LiDAR Project shall be limited to the reimbursement of expenditures authorized by, and for the amounts set forth in the SOW. Three separate payments will be made to the DISTRICT in accordance with the payment schedule set forth in the SOW. The DISTRICT approved invoice shall be sent to the CITY within ten (10) business days of payment to DEWBERRY.

(e) The DISTRICT shall provide the CITY with all LiDAR data, reports, and deliverables produced for the AOI in accordance with the terms of this Agreement and as specified in the SOW.

**SECTION 5. PROJECT MANAGEMENT.**

1. The Project Managers listed below shall be responsible for overall coordination and management of the LiDAR Project. Either party may change its Project Manager upon three (3) business days prior written notice to the other party. Written notice of change of address shall be provided within five (5) business days.
2. Whenever either party desires or is required to give notice unto the other, all notices shall be in writing to the Project Managers at the addresses below and shall be sent by one of the following methods: (1) hand delivery; (2) U.S. certified mail; (3) national overnight courier; or (4) e-mail. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier deemed delivered one (1) business day after having been deposited with the courier. Notices via e-mail are deemed delivered on the date transmitted and received.

DISTRICT CITY

Bill VanSickle Denise Bevan

Project Manager Project Manager

St. Johns River Water Management District City of Palm Coast

4049 Reid Street 160 Lake Avenue

Palatka, Florida 32177 Palm Coast, Florida 32164

386-329-4580 386-986-2458

[bvansick@sjrwmd.com](mailto:bvansick@sjrwmd.com) [dbevan@palmcoastgov.com](mailto:dbevan@palmcoastgov.com)

**SECTION 6. AUTHORIZATION.** The CITY hereby authorizes the DISTRICT to make arrangements for the coordination of all services necessary for the LiDAR Project with DEWBERRY consistent with the terms of this Agreement and the SOW.

**SECTION 7. EFFECTIVE DATE AND TERM.** This Agreement shall become effective upon execution by both parties (“Effective Date”) and shall expire on December 31, 2017 (“Completion Date”), unless renewed or amended by the parties. Notwithstanding specific mention that certain provisions survive termination or expiration of this Agreement, all provisions of this Agreement that by their nature extend beyond the Completion Date survive termination or expiration hereof.

**SECTION 8. TERMINATION BY CITY FOR CAUSE.**

(a) The CITY may terminate this Agreement for convenience at any time for one or more of the reasons as follows:

(1)  If, in the CITY’S opinion, adequate progress under the SOW is not being made by the DISTRICT or its consultants; or

(2) If, in the CITY’S opinion, the quality of the services provided by the DISTRICT pursuant to this Agreement and the SOW are not in conformance with commonly accepted professional standards, standards of the CITY, the requirements of Federal or State regulatory agencies, and the DISTRICT has not corrected such deficiencies in a timely manner as reasonably determined by the CITY; or

(3)  DEWBERRY becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or

(4)  DEWBERRY violates the standards of conduct provisions herein or any provision of State or local law or any provision of the City Code of Conduct.

(b) In the event of any of the causes described in Subsection (a), the CITY may send a certified letter requesting that the DISTRICT show cause why this Agreement should not be terminated.  If assurance satisfactory to the CITY of corrective measures to be made within a reasonable time is not given to the CITY within fourteen calendar days of the receipt of the letter, the CITY may consider the DISTRICT to be in default, and may immediately terminate this Agreement. In such event, the DISTRICT shall be compensated for any work performed prior to the date of termination, which DEWBERY properly invoices the DISTRICT for under DISTRICT Contract # 28743. All deliverables provided by DEWBERRY prior to the date of Termination shall be provided to the CITY.

(c) In the event that this Agreement is terminated for cause and it is later determined that the cause does not exist, then this Agreement shall be deemed terminated for convenience by the CITY and the CITY shall have the right to so terminate this Agreement without any recourse by the DISTRICT.

**SECTION 9.  TERMINATION BY DISTRICT FOR CAUSE.**

(a) The DISTRICT may terminate this Agreement for cause at any time if:

(1) The CITY materially fails to meet its obligations and responsibilities as contained in Section 3; City Responsibilities; or

(2)    The CITY fails to pay the DISTRICT in accordance with this Agreement.

(b) In the event of either of the causes described in Subsection (a), the DISTRICT shall send a certified letter requesting that the CITY show cause why the Agreement should not be terminated.  If adequate assurances are not given to the DISTRICT within fourteen calendar days of the receipt of said show cause notice, the DISTRICT may consider the CITY to be in default, and may immediately terminate this Agreement. In such event, the DISTRICT shall be compensated for any work performed prior to the date of termination, which DEWBERY properly invoices the DISTRICT for under DISTRICT Contract # 28743. All deliverables provided by DEWBERRY prior to the date of Termination shall be provided to the CITY.

**SECTION 10.  TERMINATION WITHOUT CAUSE.**

(a) Notwithstanding any other provision hereof, either party may at any time terminate this Agreement or any work order issued under it, in whole or in part, without cause, upon thirty (30) days written notice to the other party. In such event, the DISTRICT shall be compensated for any work performed prior to the date of termination, which DEWBERY properly invoices the DISTRICT for under DISTRICT Contract # 28743. All deliverables provided by DEWBERRY prior to the date of termination shall be provided to the CITY. Upon receipt of notice, the DISTRICT shall discontinue the work, and notify DEWBERRY to discontinue the work as of the termination date and to the extent specified therein and shall place no further orders for materials, equipment, services, or facilities, except as needed to continue any portion of the work not terminated.

(b) If the DISTRICT’s contract with DEWBERRY (DISTRICT Contract No. 28743) is terminated for any reason, this Agreement shall also be terminated and the DISTRICT shall be compensated for any work performed prior to the date of termination, which DEWBERY properly invoices the DISTRICT for under DISTRICT Contract # 28743. All deliverables provided by DEWBERRY prior to the date of termination shall be provided to the CITY.

**SECTION 11. OWNERSHIP OF DELIVERABLES.** Upon completion of the LiDAR Project, the deliverables will be owned and maintained by the CITY; and CITY grants to the DISTRICT a royalty-free, non-exclusive, irrevocable license to all deliverables generated under this Agreement for use by the DISTRICT for the DISTRICT’s own purposes.

**SECTION 12. FORCE MAJEURE**. No party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by *Force Majeure*. *Force Majeure* shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any emergency declaration under state or local law, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

**SECTION 13. PUBLIC RECORDS**. The PARTIES shall allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, *Florida Statutes*, and the *Constitution of the State of Florida* and which have been made or received by the PARTIES in conjunction with this Agreement.

**SECTION 14. ENTIRE AGREEMENT/MODIFICATION.** This Agreement constitutes the complete, integrated and entire agreement between the PARTIES with respect to the subject matter hereof, and supersedes any and all prior agreements, arrangements, contracts or understandings, whether oral or written, between the PARTIES all of which, if any, have been integrated herein. This Agreement may not be amended, changed, or modified and material provisions hereunder may not be waived, except by a written document, of equal dignity herewith and signed by all PARTIES to this Agreement.

**SECTION 15. THIRD PARTY BENEFICIARIES.** This Agreement is solely for the benefit of the formal PARTIES to this Agreement, and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the PARTIES hereto as set forth herein.

**SECTION 16. SEVERABILITY.** If any one or more of the covenants or provisions of this Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Agreement, and shall in no way affect the validity of the remaining covenants or provisions of this Agreement; provided, however, that the public interest in the terms set forth herein is not substantially, adversely impacted.

**SECTION 17. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

**SECTION 18. COVENANTS OF FURTHER ASSURANCES.** The CITY and the DISTRICT agree that from and after the date of execution hereof, each will, upon the request of the other, execute and deliver such other documents and instruments and take such other action as may be reasonably required to carry out the purpose and intent of this Agreement.

**SECTION 19. DISPUTES.** The City Manager for the CITY and the Executive Director for the DISTRICT shall use their best efforts and diligence to amicably resolve any dispute or disagreement concerning any provision of this Agreement; however, failing which after best efforts and diligence, then any dispute relating to this Agreement shall be resolved by a court of competent jurisdiction. For purposes herein, the PARTIES agree that should such dispute necessitate judicial intervention, that all conditions and prerequisites under the Florida Governmental Conflict Resolution Act (set forth in Chapter 164, Florida Statutes), shall be deemed to have been met and that the PARTIES shall be presumed to be at impasse for all purposes including judicial review. Further, to the extent allowed by law, the PARTIES expressly waive all procedures, processes and time frames set forth in Chapter 164, Florida Statutes. Each party shall be responsible for its own costs and attorney’s fees in the event of any dispute, claim, action or appeal related to or arising from this Agreement.

**SECTION 20. LIABILITY.** Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party, its officers, employees and agents. Nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available under the laws of the state of Florida, nor as a waiver of sovereign immunity of the state of Florida beyond the waiver provided for in section 768.28, Fla. Stat., as amended. Each party shall acquire and maintain throughout the term of this Agreement such as liability, workers’ compensation, and automobile insurance as required by their current rules and regulations. This Agreement shall not create a contractual relationship, either express or implied, between the DISTRICT and any other person, firm, or corporation supplying any work, labor, goods or materials to the CITY.

**SECTION 21. SOVEREIGN IMMUNITY.** Nothing herein shall be deemed a waiver, express or implied, of either PARTIES’ sovereign immunity or an increase in the limits of liability pursuant to Section 768,.28, Florida Statutes, regardless of whether any such obligations are based in tort, contract, statute, strict liability, negligence, product liability or otherwise, To the extent anything contained in this Agreement constitutes a waiver of sovereign immunity, such terms and conditions shall be interpreted to the fullest extent possible to effectuate the intent of the PARTIES, but deleting any terms or conditions which would constitute a waiver of sovereign immunity. Nothing herein shall be construed as consent by either party to be sued by third parties in any matter arising out of any contract, act or action.

**IN WITNESS WHEREOF**, the PARTIES hereto have caused the execution by their duly authorized officials on the dates indicated below.

***ATTEST:*****CITY OF PALM COAST, FLORIDA**

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Virginia A. Smith, City Clerk BY: Milissa Holland, Mayor

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

Approved as to form.

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William E. Reischmann, Jr., City Attorney

***ATTEST:*****ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**

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

BY: Ann B. Shortelle, Ph. D.

Executive Director

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

Approved as to form.

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William Abrams, Deputy General Counsel