

## **PALM HARBOR PARKWAY – PHASE II**

### **AGREEMENT FORM**

THIS AGREEMENT is between LRA Hammock Beach, LLC and the City of Palm Coast (hereinafter collectively and severally called Owner) and Hubbard Construction Company (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1. WORK

1.1. Contractor shall complete Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The project consists of the extension of Palm Harbor Parkway from west of Old Kings Road extending east for a total length of approximately 0.80 miles. Roadway improvements are also included along Old Kings Road both north and south of the intersection with Palm Harbor Parkway. The project includes stormwater facilities and the construction of water main and sewer force main construction.

2. OWNER REPRESENTATIVES

2.1. Florida Engineering Group, Inc. is hereinafter called Engineer and is to act as Owner's representative, assume duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

2.2. The Owner may appoint and assign other professionals and agents to act on behalf of the Owner to inspect, monitor, test, coordinate, review, and evaluate the Work.

3. CONTRACT TIMES AND LIQUIDATED DAMAGES

3.1. Contract Times:

3.1.1. Contractor will achieve Substantial Completion within 120 days from the date when the Contract Times commence to run as provided in Article 5 of the General Conditions, and Work will be completed and ready for final payment and acceptance in accordance with Article 8 of the General Conditions within 150 days from the date when the Contract Times commence to run.

3.1.2. Contractor shall achieve substantial completion of all work associated with the Old Kings Road, Matanzas Woods Parkway, and Palm Harbor Parkway intersection, less the installation of the Traffic Signal, by August 9,

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2015, temporary signage shall be installed until the Traffic Signal is fully operational and activated by the City of Palm Coast.

### 3.1. Liquidated Damages:

3.1.1. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph Contract Times above. Owner and Contractor also recognize the delays, expense, and difficulties involved in proving in a legal or other dispute resolution proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner Five Hundred Dollars (\$500.00) for each day that expires after the time specified in paragraph Contract Times above, for Substantial Completion and Final Completion, to be assessed separately, and which may be assessed concurrently. Final Completion includes, but is not limited to, final approval from the City of Palm Coast, Florida Department of Environmental Protection (FDEP), the Engineer, the Owner, Flagler County, and any other reviewing officials for the Project.

## 4. CONTRACT PRICE

4.1. Owner shall pay Contractor the following estimated extended total based on the conformed Bid, which is included as an Exhibit to this Agreement.

Two Million Five Hundred Five Thousand One Hundred Nineteen Dollars and 69 Cents ( \$2,505,119.69 ) subject to additions and deletions as provided in the Contract Document.

4.2. Unit prices work included in the Contractor's bid and incorporated into the Contract Documents shall apply to any work elected by the Owner for the specific scopes addressed in the unit pricing schedules.

4.3. The Owner also elects to engage the Contractor for the installation of sod, but will self-perform installation of the other landscape and irrigation scope. The unit pricing for sod shall apply to the Sod installation work conducted by the contractor. The Contractor shall coordinate closely with the Owner to achieve a completion job, allowing for the Owner to install irrigation system components between final grading and sod installation.

## 5. RETAINAGE

5.1. Prior to Substantial Completion, Owner shall retain from progress payments 10 percent of the value of Work completed. When Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, additional retainage will be retained at 5 percent of the work completed. Following Substantial Completion, Owner shall retain from progress

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payments an amount, not to exceed 5 percent of the value of the Work complete, sufficient to ensure completion of the Work and to pay all Liens, claims, or other obligations of the Contractor currently outstanding.

### **6. INTEREST**

6.1. Monies not paid when due as provided in Article 18 of the General Conditions shall bear interest at the rate of 1/2 percent per month.

### **7. CONTRACTOR'S REPRESENTATIONS**

7.1. In order to induce Owner to enter into this Agreement, Contractor's representations are as set forth as follows:

7.1.1. Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, general nature of work to be performed by Owner or others at the site that relates to Work required by the Contract Documents and local conditions and federal, state, and local Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of Work.

7.1.2. Contractor has studied carefully reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in Article 20 of the Special Conditions, and accepts the determination set forth to the extent of the technical data contained in such reports and drawings upon which Contractor is entitled to rely. Contractor acknowledges that such reports and drawings are not Contract Documents.

7.1.3. Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) examinations, investigations, explorations, tests, studies, and reports (in addition to or to supplement those referred to above) which pertain to the conditions (subsurface or physical) at or contiguous to the site or otherwise and which may affect the cost, progress, performance, or furnishing of the Work as Contractor deems necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents; and no additional or supplementary examinations, investigations, explorations, tests, reports, or similar information or data are or will be required by Contractor for such purposes.

7.1.4. Contractor has reviewed and checked information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and has included these in his construction cost.

7.1.5. Contractor has correlated information known to Contractor and results of such observations, familiarizations, examinations, investigations, explorations, tests, studies, and reports with Contract Documents.

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7.1.6. Contractor has given Engineer written notice of conflicts, errors, ambiguities, or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of terms and conditions for performing and furnishing Work.

### **8. CONTRACT DOCUMENTS**

8.1. The Contract Documents which comprise the entire Agreement between Owner and Contractor concerning Work are defined in Article 2 of the General Conditions.

8.2. Except for the Notice to Proceed, Drawings, and Addenda, these Contract Documents are also listed in the Documents List and are bound in 1 volume, identified as Bidding Requirements and Contract Documents for the Construction of PALM HARBOR PARKWAY – PHASE II.

8.3. Exhibits to this Agreement include:

8.3.1. Conformed Bid Form signed by Contractor.

8.3.2. Executed Performance and Payment Bonds.

8.3.3. Documents submitted by Contractor prior to execution of Agreement.

### **9. MISCELLANEOUS.**

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

9.2. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor, AND Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor.

**PALM HARBOR PARKWAY – PHASE 2**

OWNER;

City of Palm Coast, Florida

By \_\_\_\_\_

Date \_\_\_\_\_

[CORPORATE SEAL]

Address for giving notices

160 Cypress Point Parkway, Suite B-106  
Palm Coast, FL 32164

OWNER;

LRA Hammock Beach, LLC

By \_\_\_\_\_

Date \_\_\_\_\_

[CORPORATE SEAL]

Address for giving notices

200 Ocean Crest Drive, Suite 31  
Palm Coast, FL 32137

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CONTRACTOR:

Hubbard Construction Company

By \_\_\_\_\_

Date \_\_\_\_\_

[CORPORATE SEAL]

Address for giving notices

1936 Lee Road

Winter Park, FL 32789

License No. CGC059695

Agent for service of process: \_\_\_\_\_

\_\_\_\_\_

(If Contractor is a corporation, attach evidence of authority to sign and resolution of other documents authorizing execution of Agreement.