



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.14.

5/17/2022

Subject:

Approval Re: Construction Agreement with City of West Melbourne for the Norfolk Parkway Turn Lane Project - District 5

Fiscal Impact:

Project Costs Estimated at \$121,929.13 for which the City will provide reimbursement to the County.

Dept/Office:

Public Works Department/Road and Bridge Construction

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chair to execute the Construction Agreement with the City of West Melbourne for the Norfolk Parkway Turn Lane Project. It is further requested that the Board authorize the County Manager to approve any necessary Budget Change Requests associated with this action.

Summary Explanation and Background:

The City of West Melbourne desires to construct an additional east bound turn lane on Norfolk Parkway at its intersection with Minton Road. On October 12, 2021 the City advertised a solicitation for bids to construct the project; but no bids were received in response to the solicitation. The City requested that the County consider constructing the project on its behalf, as the City has previously utilized the County's services for road improvements. The Public Works Department/Road and Bridge Construction team expressed a willingness to perform the project estimated at \$121,929.13 per the County's Job Estimate. Differences in quantities installed between the County's Job Estimate and the actual field measurements will be rectified by mathematical tabulation of the final field measurements at the end of the project. The Agreement also provides for a mechanism to approve Change Orders.

The City will provide all costs associated with the project. The construction estimate is below the current threshold amount set forth in Section 255.20(2), Florida Statutes; therefore, construction can be performed by the County. The terms and conditions for the project are established in the City of West Melbourne Norfolk Parkway Turn Lane Project Construction Agreement. On March 15, 2022, the City Council approved the selection of construction by the County and authorized the City Manager to negotiate and execute a contract to accomplish the project. In accordance with Administrative Order 29, the Agreement has been reviewed and approved by the County Attorney's Office, Risk Management and Purchasing Services.

Clerk to the Board Instructions:

The original Agreement signed by the City will be provided to the Clerk to the Board for execution by the County. The Public Works Department will pick up the executed original Agreement from the Clerk to the

Board for further recordation by the Brevard Clerk of Court's Recording Division.

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: N/A		2. Amount: \$121,929.13	
3. Fund/Account #: TBD		4. Department Name: Public Works	
5. Contract Description: NORFOLK PARKWAY TURN LANE PROJECT CONSTRUCTION AGREEMENT			
6. Contract Monitor: Jeanette Scott		8. Contract Type:	
7. Dept/Office Director: Marc Bernath		INTERGOVT/LOCAL	
9. Type of Procurement: Select from pulldown:			

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

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Purchasing

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☐

Risk Management

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☐

County Attorney

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SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

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Bernath, Marc

Digitally signed by Bernath, Marc
DN: cn=Bernath, Marc, email=Marc.Bernath@brevardfl.gov
Date: 2022.05.10 12:48:14 -0400

Purchasing

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Wall, Katherine

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Date: 2022.05.10 12:31:36 -0400

Risk Management

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Wilson, Shannon

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Date: 2022.05.10 12:08:32 -0400

County Attorney

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SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

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9. Type of Procurement: Select from pulldown:			

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

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Purchasing

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Risk Management

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County Attorney

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SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

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Purchasing

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Risk Management

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County Attorney

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Esseesse, Alexander

Digitally signed by Esseesse, Alexander
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SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



May 18, 2022

M E M O R A N D U M

TO: Marc Bernath, Public Works Director

RE: Item F.14., Construction Agreement with City of West Melbourne for the Norfolk Parkway Turn Lane Project

The Board of County Commissioners, in regular session on May 17, 2022, approved and authorized the Chair to execute the Construction Agreement with the City of West Melbourne for the Norfolk Parkway Turn Lane Project; and authorized the County Manager to approve any necessary Budget Change Requests associated with this action. Enclosed are two fully-executed Construction Agreements.

Your continued cooperation is always appreciated.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK**

for Donna Scott
Kimberly Powell, Clerk to the Board

Encls. (2)

/tr

cc: Contracts Administration
Finance
Budget

**CITY OF WEST MELBOURNE
NORFOLK PARKWAY TURN LANE PROJECT
CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the "Agreement") is made between the CITY OF WEST MELBOURNE, a Florida municipal corporation, located at 2240 Minton Road, West Melbourne, Florida 32904 (the "City" or "Owner"), and BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, having its principal office located at 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (the "County").

RECITALS

WHEREAS, the City desires to construct an additional east bound turn lane on Norfolk Parkway at its intersection with Minton Road for the benefit of the public health, safety and welfare; and

WHEREAS, on October 12, 2021 the City advertised a solicitation for bids for the *Norfolk Parkway Turn Lane Project* (the "Project"); and

WHEREAS, no bids were received in response to the solicitation for bids; and

WHEREAS, the City requested that the County consider constructing the Project, as the City has previously utilized the County's services for road improvements with good result; and

WHEREAS, the County has expressed the capability, willingness and availability of resources to perform the Project pursuant to the Contract Documents; and

WHEREAS, the County proposed to construct the Project for an amount that is reasonable in relationship to the City design engineer's estimate for that part of the work; and

WHEREAS, on March 15, 2022, the City Council approved the selection of County and authorized the City Manager to negotiate and execute a contract to accomplish the Project.

NOW, THEREFORE, the City and the County, for and in consideration of the provisions, mutual promises, covenants and conditions hereinafter set forth or recited, agree as follows:

SECTION 1 – RECITALS

- 1.1 **Recitals.** The recitals in the WHEREAS clauses are incorporated by reference and made a part of this Agreement.

SECTION 2 – CONTRACT AND CONTRACT DOCUMENTS

- 2.1 **The Contract.** The Contract between the City and the County, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.
- 2.2 **The Contract Documents.** The Contract Documents consist of this Agreement, the Plans, Drawings, Specifications, the County's Job Estimate #497 dated March 2, 2022, all Change Orders and Field Orders issued hereafter and executed by the parties, and any other amendments hereto executed by the parties hereafter. The Contract Documents are hereby incorporated into and made part of this Agreement. In the case of any conflict between the provisions of this Agreement and the provisions of any of the other Contract Documents, the terms and conditions of this Agreement shall control.

- 2.3 **Entire Agreement.** Documents not enumerated in this Section are not Contract Documents and do not form part of the Contract.
- 2.4 **No Privity with Others.** Nothing contained in this Agreement shall create, or be construed to create, privity or a contractual relationship of any kind between the City and a subcontractor, sub-subcontractor, supplier, or any person or entity other than the County.
- 2.5 **County Representations, Intent and Interpretation**
- 2.5.1 Execution of this Agreement is a representation that the County thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations and rules as they apply to the Work, and that the County will abide by same. The County will rely upon the Plans, Drawings, Specifications, and other project-related documentation provided by the City. To that extent, the City understands that any errors or omissions in the Plans, Drawings, and/or Specifications, and any associated delays caused by such errors or omissions, are not the County's responsibility.
- 2.5.2 This Agreement is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by this Agreement subject to the order of precedence identified in Section 2.2 above.
- 2.5.3 When a word, term or phrase is used in this Agreement, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 2.5.4 The words "include," "includes" or "including," as used in this Agreement, shall be deemed to be followed by the phrase "without limitation."
- 2.5.5 Words or terms used as nouns in this Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.
- 2.5.6 In the event of conflicting provisions in the specifications or the Drawings, the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; and the more expensive item will take precedence over the less expensive. As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern. For purposes of payments, field measurements of work performed shall govern over numbers or scaled measurements of the Bid Documents or Plans.
- 2.5.7 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs or articles, nor the organization or arrangement of the Design or Drawings shall control the County in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.

- 2.5.8 Any reference to a "Project Manager" in the Contract Documents shall mean the City's designated internal representative, who shall have all duties and responsibilities assigned to the Project Manager.
- 2.6 **Interlocal Agreement.** This Agreement is made pursuant to the Florida Interlocal Cooperative Act of 1969, Section 163.01, Florida Statutes. Pursuant to Section 163.01(11), Florida Statutes, this Agreement shall become effective upon its recordation in the Public Records of Brevard County, Florida. The City hereby agrees to pay for any costs of recordation of this Agreement.

SECTION 3 – THE WORK

- 3.1 **Definition.** The term "Work" shall mean whatever is done by or required of the County to perform and complete its duties under this Agreement, including the following: construction of the whole or a designated part of the Project in the manner set forth in the Contract Documents; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the County, fuel, heat, light, cooling and all other utilities as required by this Agreement.
- 3.2 **Scope of Work.** The Work to be performed by the County is generally described as the furnishing of all labor, materials, equipment and incidentals which are required to construct the Project in its entirety as shown on the Drawings and specified in the Contract Documents. Unless otherwise provided, the County shall provide and pay for labor, materials, equipment, tools, machinery, transportation, water, electricity, utilities, and other facilities and services necessary for the proper execution of the Work. The Work includes, but is not necessarily limited to dewatering, rip-rap, earthwork, erosion control and sedimentation, clearing and grubbing, maintenance of traffic, roadway repair, and all fittings and appurtenances required to complete the work as shown on the Design drawings.
- 3.3 **Performance.** The County shall perform all of the Work required, implied, or reasonably inferred from this Contract.

SECTION 4 – TIME FOR COUNTY'S PERFORMANCE

- 4.1 **Contract Time.** The City will issue the Notice to Proceed on a date mutually agreed to by the City and the County. The County shall commence the Work within thirty (30) days of receipt of the Notice to Proceed and shall diligently continue its performance to and until Final Completion of the Project. The County shall accomplish Final Completion of the Project within ninety (90) days from the date of the Notice to Proceed (the "Contract Time").
- 4.2 **Pre-Construction Meeting.** Prior to any work beginning, the City and the County shall have a pre-construction meeting to discuss work coordination, schedule and sequence of work.
- 4.3 **Substantial Completion.** The County shall accomplish Substantial Completion of the

Project within sixty (60) days from the date of the Notice to Proceed, subject to any extensions of time mutually agreed to in writing by the parties. "Substantial Completion" shall mean that point at which the Project is at a level of completion in strict compliance with this Contract such that the City can enjoy beneficial use or occupancy and can use or operate it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

- 4.4 **Progress Meetings.** The Project Manager and the County shall meet at the job site at least once a week during each calendar month for review and updates on the job program, or as otherwise mutually agreed by the Project Manager and the County.

SECTION 5 – CONTRACT PRICE

- 5.1 **Contract Price.** The City shall pay, and the County shall accept, as full and complete payment for all the Work required herein the sum of **One Hundred Twenty-One Thousand Nine Hundred Twenty-Nine and 13/100 Dollars (\$121,929.13)**, subject to adjustments provided for herein. This sum shall constitute the Contract Price, which shall not be modified except by Change Order as provided in this Contract. Differences in quantities installed between the County's Job Estimate and the actual field measurements will be rectified by mathematical tabulation of the final field measurements at the end of the Project.
- 5.2 **Owner Contingency.** The above-stated Contract Price includes an owner-directed contingency allowance in the amount of **Eleven Thousand Eighty-Three and 61/100 Dollars (\$11,083.61)** to be used only at the City's direction for unforeseen circumstances, and pursuant to the Change Order provisions contained herein. Although the contingency allowance is included in the Contract Price, the County agrees that any unused portion of the contingency allowance will remain with the City, and the County will have no claim for the unused amount. The County further agrees to execute such change orders as may be required to deduct the unused amount of the contingency from the Contract Price.

SECTION 6 – PAYMENT

6.1 Progress Payments

- 6.1.1 Based upon the County's Applications for Payment submitted to the City, the City shall make progress payments to the County on account of the Contract Price. All such payments will be measured by the County's Job Estimate (and in the case of Unit Price Work based on the number of units completed). Progress payments will be made in an amount equal to the percentage of the Work completed, less the aggregate of payments previously made.
- 6.1.2 On or before the fifteenth (15th) day of each month after commencement of the Work, the County shall submit an Application for Payment for the period ending the thirtieth (30th) day of the previous month to the City in such form and manner, and with such supporting data and content, as the City may require. Therein, the County may request payment for that portion of the Contract Price properly incorporated in the Work less the total amount of previous payments received from

the City.

- 6.1.3 Such Application for Payment shall be signed by the County and shall constitute the County's representation that the Work has progressed to the level for which payment is requested, that the Work has been properly installed or performed in full accordance with this Contract, and that the County knows of no reason why payment should not be made as requested. Thereafter, the City shall review the Application for Payment and may also review the Work at the project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The City shall make partial payments on accounts of the Contract Price within twenty-five (25) business days after the City's receipt of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Project Manager.
- 6.1.4 If an Application for Payment does not meet the Contract requirements, the City shall reject the Application for Payment within twenty-five (25) business days after the City's receipt of such Application for Payment. The rejection shall be written and shall specify the deficiency and the action necessary to make the Application for Payment proper. If an Application for Payment is rejected under this subsection and the County submits an Application for Payment that corrects the deficiency, the City shall make partial payment within ten (10) business days after the date the corrected Application for Payment is received.
- 6.1.5 The City and County may utilize a different method of payment subject to the mutual agreement of the Project Manager and the County's authorized representative. Specifically, it is contemplated by the parties that the County may submit an invoice for the entirety of the Work performed at the conclusion of the Project, in lieu of monthly pay applications.

6.2 Substantial Completion and Substantial Completion Punch List

- 6.2.1 When the Project Manager, on the basis of an inspection, determines that the County has achieved Substantial Completion, he shall issue a Certificate of Substantial Completion, which shall establish the date of Substantial Completion.
- 6.2.2 Within five (5) business days after reaching Substantial Completion, the Project Manager shall develop the "Substantial Completion Punch List," which establishes a single list of items required to render complete, satisfactory, and acceptable the Work of the Contract.
- 6.2.3 Within five (5) days of the list being developed, the Project Manager shall deliver the Substantial Completion Punch List with the County. The Project Manager and the County shall review the Substantial Completion Punch List together at that time, if they have not already done so during its development.
- 6.2.4 The Substantial Completion Punch List shall fix the date by which the County shall complete the Substantial Completion Punch List, which date shall be at least thirty (30) calendar days after the delivery of the Substantial Completion Punch List to

the County.

- 6.2.5 The failure of the City to include any corrective work or pending items not yet completed on the Substantial Completion Punch List does not alter the responsibility of the County to complete all of the Work pursuant to the Contract.

6.3 Final Completion and Final Payment

- 6.3.1 When all the Work is finally complete and the County is ready for a Final Inspection, it shall notify the City in writing and submit its Application for Final Payment. Thereupon, the Project Manager shall make Final Inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Project Manager shall issue a Final Certificate for Payment.
- 6.3.2 If a Final Certificate for Payment has been issued, the City shall make Final Payment of all sums due the County within twenty-five (25) business days of receipt of the County's Application for Final Payment.
- 6.3.3 Acceptance of final payment by the County, or a subcontractor or a material supplier shall constitute a waiver of all claims regarding payment by the payee except those previously made in writing against the City by the County, pending at the time of Final Payment, and identified in writing by the County as unsettled at the time of its request for Final Payment.

SECTION 7 – THE CITY

7.1 Information, Services and Materials Required from the City

- 7.1.1 The City shall furnish to the County, at the time of executing this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the County only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly, or at all, and shall have no liability therefore. The City shall also furnish surveys, legal limitations and utility locations (if known). Copies may be provided instead of originals. The County shall not be responsible for any delays caused by the good faith reliance on such written and/or tangible materials concerning conditions below ground, surveys, legal limitations, or utility locations.
- 7.1.2 Excluding permits and fees normally the responsibility of the County, the City shall obtain all approvals, easements, and the like required for construction.

SECTION 8 – THE COUNTY

- 8.1 **Duty of the County.** The County shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Design Drawings, Shop Drawings, Product Data or Samples for such portion of the Work. The County shall

perform all exploratory operations in advance of the Work as it deems necessary. If the County performs any of the Work where County knows such work involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the City, the County shall bear responsibility for such performance and shall bear the cost of correction.

8.2 **Performance.** The County shall perform the Work strictly in accordance with this Contract.

8.3 **Supervision.**

8.3.1 The County shall supervise and direct the Work using the County's best skill, effort and attention. The County shall be responsible for the negligent acts or omissions of the County, its employees and others engaged in the Work on behalf of the County. The County shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement unless the Contract Documents give other specific instructions concerning these matters.

8.3.2 County shall have a competent supervisor who will, as the County's agent, supervise, direct, and otherwise oversee the performance of the Work. County shall provide the City contact information including cell phone number, email address, or any other contact information of the County's supervisor.

8.3.3 Key supervisory personnel assigned by the County to this Project are as follows:

Name	Function
Jim Wham	Project Manager
Rickey Dix	Project Supervisor

8.3.4 So long as the individuals named above remain actively employed or retained by the County, they shall perform the functions indicated next to their names unless the City agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the County shall immediately notify the City and the County shall be bound by the provisions of this Section as though such individuals have been listed above.

8.4 **Schedule.** The County, prior to commencing the Work, shall submit to the Project Manager for his information, the County's schedule for completing the Work. The County's schedule shall be revised to reflect conditions encountered from time to time as necessary.

8.5 **Utility Lines.** When existing utility lines shown on the Drawings are to be removed or relocated, the County shall notify the City in ample time for taking measures for prevention of the interruption of any required services prior to the beginning of operations. In the event that the County damages any existing utility lines not shown on the Drawings, the location of which is not known to the County, report thereof shall be made immediately to the City. Locations of existing utility lines shown on the Drawings are based on the best information available to the City, but shall not be considered exact either as to location or

number of such lines. County shall use its best efforts to protect installed utility lines and those discovered or shown on Drawings to be existing.

- 8.6 **Cleaning the Site and the Project.** The County shall keep the site surrounding area free from all accumulations of waste materials or rubbish caused by the operations under the Agreement and reasonably clean during performance of the Work. Upon Final Completion of the Work, the County shall clean the site and the Project and remove all waste, together with all of the County's property therefrom.
- 8.7 **Access to Work.** The City shall have access to the Work at all times from commencement of the Work through Final Completion. The County shall take whatever steps necessary to provide access when requested.
- 8.8 **Indemnity.** To the extent allowed by law and subject to the provisions of Section 768.28, Florida Statutes, each party is responsible for the negligent or wrongful acts or omissions of its own employees, agents, or other representatives while acting within the scope of their employment or otherwise within their authorized capacity, arising from the activities encompassed by the Contract. Nothing in this Contract requires either party to indemnify the other party for any losses, damages, or injuries caused by or otherwise arising from the negligent or wrongful act or omission of its employees, agents, or representatives. Neither party, by execution of this Contract, will be deemed to have waived any statutory right or defense of sovereign immunity, or to have increased its limits of liability under Section 768.28, Florida Statutes, as may be amended from time to time. Each party shall retain all rights, defenses, and remedies under Florida law in the event of any claims, suits, or other disputes arising from its performance of the obligations under this Contract. Nothing in this Contract shall be interpreted to create any causes of action for any third parties not a party to this Contract.
- 8.9 **Safety.**
- 8.9.1 The County shall be responsible for supervising all safety precautions, including initiating and maintaining such programs in connection with the performance of the Contract and for adequate maintenance of traffic.
- 8.9.2 The County shall take all reasonable precautions to prevent damage, injury or loss to:
- (a) all persons who may be affected by the performance of the County's operation, including employees;
 - (b) all materials and equipment; and
 - (c) all property at or surrounding the work site.
- 8.9.3 In an emergency affecting the safety of persons or property, the County will act with reasonable care and discretion to prevent any threatened damage, injury or loss.

SECTION 9 – CONTRACT ADMINISTRATION

9.1 Project Manager

- 9.1.1 The Project Manager, unless otherwise directed by the City, shall perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Agreement. The Project Manager shall be the City's representative from the effective date of this Agreement until Final Payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Agreement.
- 9.1.2 The Project Manager shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the County. The Project Manager shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the County.
- 9.1.3 The Project Manager shall review the County's Applications for Payment and shall approve for payment to the County those amounts then due to the County as provided in this Agreement.
- 9.1.4 The Project Manager will visit the site at intervals appropriate to become familiar with the progress and quality of the Work and to determine in general if the Work, when completed, will be in accordance with the Contract Documents. However, the Project Manager shall not be required to make exhaustive or continuous on-site inspections to check quality and quantity of the Work. The Project Manager shall not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or safety precautions and programs in connection with the Work. The Project Manager shall not be responsible for the County's failure to carry out the Work in accordance with the Contract Documents. The Project Manager shall have authority to reject Work which is defective or does not conform to the requirements of this Agreement upon written explanation to the County of such defect or nonconformity. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with the requirements of the Contract Documents.
- 9.1.5 The Project Manager shall review and approve, or take other appropriate action as necessary, concerning the County's submittals, including Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.
- 9.1.6 The Project Manager shall process Change Orders and may authorize minor changes in the Work by field order as provided elsewhere herein. The County will prepare all Change Orders for further processing by the City on forms provided by the County.
- 9.1.7 The Project Manager shall, upon written request from the County, (i) conduct

inspections to determine the date of Substantial Completion and the date of Final Completion; (ii) receive and review written warranties and related documents required by this Contract; and (iii) issue a Final Certificate for Payment upon compliance with the requirements of this Agreement.

- 9.1.8 The Project Manager's decision in matters relating to aesthetic effect shall be final if consistent with the intent of this Agreement.

9.2 Claims by the County

- 9.2.1 All County claims shall be initiated by written notice and claim to the City. Such written notice and claims must be furnished within seven (7) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 9.2.2 Pending final resolution of any claim of the County, the County shall diligently proceed with performance of this Agreement and the City shall continue to make payments to the County in accordance with this Agreement. The resolution of any claim under Section 9.2 shall be reflected by processing a Change Order through the Project Manager.
- 9.2.3 Claims for Concealed and Unknown Conditions - Should concealed and unknown conditions encountered in the performance of the Work (i) below the surface of the ground or (ii) in an existing structure be at variance with the conditions indicated by this Agreement, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Agreement, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition.
- 9.2.4 Claims for Additional Costs - If the County wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the County shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the County before proceeding to execute any additional or changed Work. Change Orders may be requested by the County in the case of circumstances outlined herein, including this Section 9. Approval of such Change Order(s) shall not be unreasonably withheld by the City. The parties further understand that the costs, scope, and/or applicable timelines associated with the Project may be altered or modified, upon written agreement between the parties, based on a change of costs or circumstances. The City shall fund 100% of construction change order costs. The parties agree to negotiate in good faith to complete the work requested. In the event an agreement cannot be reached in order to complete a particular task, said request may be cancelled, rejected, or otherwise terminated by the County without penalty. The County shall be paid for whatever work has been completed up to the date of cancellation or termination.

- 9.2.4.1 In connection with any claim by the County against the City for

compensation in excess of the Contract Price, any liability of the City for the County's costs shall be strictly limited to direct costs incurred by the County and shall in no event include indirect costs or consequential damages of the County.

- 9.2.4.2 The City shall not be liable to the County for claims of payment of third parties, including subcontractors, unless and until liability of the County has been established therefore in a court of competent jurisdiction.
- 9.2.5 Claims for Additional Time - Where the County is prevented from completing any part of the Work timely due to delay beyond the control of the County, the City shall allow for reasonable additional time. Delays beyond the control of the County include, but are not limited to, acts or neglect by the City, acts or neglect of utility owners or sub-contractors performing work, fires, floods, epidemics, adverse weather conditions, or acts of God or other catastrophic events. In the event construction is delayed, the County shall secure the Project site to ensure the safety of the public.
- 9.3 **Field Orders.** The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by field order and shall be binding upon the County. The County shall carry out such field orders promptly.

SECTION 10 – CHANGES IN THE WORK

10.1 Changes Permitted

- 10.1.1 Changes in the Work within the general scope of this Agreement, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Agreement, by Change Order or by Field Order.
- 10.1.2 Changes in the Work shall be performed under applicable provisions of this Agreement and the County shall proceed promptly with such changes.
- 10.2 **Change Order Defined.** Change Order shall mean a written order prepared by the County and subsequently executed by the City, issued after execution of this Agreement, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. Only the Change Order may change the Contract Price and the Contract Time.

10.3 Changes in the Contract Price

- 10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows:
 - (i) by mutual agreement between the City and the County as evidenced by:
 - (a) the change in the Contract Price being set forth in the Change Order;

- (b) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties; and
 - (c) the parties' execution of the Change Order, or
 - (ii) if no mutual agreement occurs between the City and the County, then, as provided in Section 10.3.2 below.
- 10.3.2 If no mutual agreement occurs between the City and the County as contemplated in Subsection 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the County shall present, in such form and with such content as the City or the Project Manager requires, an itemized accounting of such expenditures or savings which shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by a pre-existing agreement or by custom, and workers' compensation insurance, reasonable costs of premiums for all Bonds and insurance, permit fees, and sales, use or other taxes related to the Work and paid by the County, and reasonable costs of supervision and field office personnel directly attributable to the change. In no event shall any expenditure or savings associated with the County's home office or other non-jobsite overhead expenses be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the County on the City's Certificate of Payment.

- 10.4 **Minor Changes.** The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the City and the County. The County shall promptly carry out such written Field Orders.
- 10.5 **Effect of Executed Change Order.** The execution of a Change Order by the County shall constitute conclusive evidence of the County's agreement to the ordered changes in the Work, this Agreement as thus amended, the Contract Price and the Contract Time. The County, by executing the Change Order, waives any claim against the City for additional time or compensation then existing at the time of execution from the Work included within or affected by the executed Change Order.

SECTION 11 – CONTRACT TERMINATION

11.1 Termination by the County

- 11.1.1 If the Work is stopped for a period of ninety (90) cumulative days by an order of any court or as a result of an act of the Government, through no fault of the County or any person or entity working directly or indirectly for the County under this

Agreement, the County may, upon ten (10) calendar days written notice to the City, terminate performance under this Agreement and recover from the City payment for the actual reasonable expenditures of the County (as limited in Subsection 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

- 11.1.2 If the City shall persistently or repeatedly fail to perform any material obligation to the County for a period of thirty (30) consecutive calendar days after receiving written notice from the County of its intent to terminate hereunder, the County may terminate performance under this Agreement by written notice to the City. In such event, the County shall be entitled to recover from the City as though the City had terminated the County's performance under this Contract for convenience pursuant to Subsection 11.2.1 hereunder.
- 11.1.3 The County may, for any reason whatsoever, terminate performance under this Agreement by giving written notice of such termination to the City specifying when termination becomes effective.

11.2 Termination by the City

11.2.1 For Convenience

- 11.2.1.1 The City may, for any reason whatsoever, terminate performance under this Contract by the County for convenience. The City shall give written notice of such termination to the County specifying when termination becomes effective.
- 11.2.1.2 The County shall incur no further obligations in connection with the Work and the County shall stop Work when such termination becomes effective. The County shall also terminate outstanding orders and subcontracts. The County shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the County to assign the County's right, title and interest under terminated orders or subcontracts to the City or its designee.
- 11.2.1.3 The County shall transfer title and deliver to the City such completed or partially completed Work and materials, equipment, parts, fixtures, information and contract rights as the County has.
- 11.2.1.4 When terminated for convenience, the County shall be compensated as follows:
 - (i) The County shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the County fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the County, an amount derived in accordance with subsection (iii) below;

- (ii) The City and the County may agree to compensation, if any, due to the County hereunder;
- (iii) Absent agreement to the amount due to the County, the City shall pay the County the following amounts:
 - (a) Contract prices for labor, materials, equipment, and other services accepted under this Agreement;
 - (b) Reasonable costs incurred in preparing to perform and in performing the Work prior to termination, and in terminating the County's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the County would have not profited or would have sustained a loss if the entire Agreement had been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
 - (c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subsection 11.2.1.2 of this Section. These costs shall not include amounts paid in accordance with other provisions hereof.

11.2.1.5 The total sum to be paid the County under Subsection 11.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

SECTION 12 – EQUAL OPPORTUNITY EMPLOYMENT

- 12.1 The County and all subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or age. The County shall take appropriate action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, national origin or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertisement, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The County agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination. The County and all subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, national origin or age.

SECTION 13 – AMENDMENTS

- 13.1 This Agreement may only be amended by an instrument in writing executed by the parties hereto or their successors in interest.

SECTION 14 – SEVERABILITY

- 14.1 If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effectuated. To that end, this Agreement is declared severable.

SECTION 15 – DISCLAIMER OF THIRD PARTY BENEFICIARIES

- 15.1 No right or cause of action shall accrue upon or by reason of this Agreement, to or for the benefit of any third party not a formal party hereto, except any successors in interest of the County or the City.

SECTION 16 – GOVERNING LAW/VENUE/ATTORNEY'S FEES/JURY TRIAL WAIVER

- 16.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action brought to enforce the terms of this Agreement shall be in a court of appropriate jurisdiction in Brevard County, Florida. In any action arising out of or relating to this Agreement, each party hereto shall bear its own attorney's fees, expenses and costs. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.

SECTION 17 – PUBLIC RECORDS, AUDITING, AND INSPECTION

- 17.1 The County shall keep and maintain, and the County shall cause its subcontractors to keep and maintain, all books, records, accounts and documents pertaining to the Project and this Agreement, in accordance with generally accepted accounting procedures. All books, records, accounts and documents related to the performance of this Agreement shall be subject to the applicable provisions of Chapter 119, Florida Statutes (the Florida Public Records Act). Upon request from the City's custodian of public records, the County shall 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 otherwise provided by law. The County shall 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 Agreement's term and following the completion of the Agreement if the County does not transfer the records to the City.
- 17.2 Upon completion of the Agreement, the County shall transfer, at no cost, to the City, all public records in the possession of the County or the County shall keep and maintain the records required by the City to perform this Agreement. If the County transfers all public records to the City upon completion of this Agreement, the County shall destroy any

duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the County keeps and maintains public records upon completion of the Agreement, the County shall meet all applicable requirements for retaining public records. All records stored electronically must 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.

- 17.3 A request to inspect or copy public records relating to this Agreement must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the County of the request, and the County shall provide the records to the City or allow the records to be inspected or copied within a reasonable time. If the County fails to comply with the City's request for records, the City shall be entitled to legal and/or equitable relief as may be necessary to enforce this provision, including, but not limited to, injunctive relief. If the County fails to provide the public records to the City within a reasonable time, the County may be subject to penalties under Section 119.10, Florida Statutes for its failure to provide the public records to the City within a reasonable time.

IF THE COUNTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COUNTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS (CURRENTLY CYNTHIA HANSCOM, CITY CLERK) AT 321-837-7774 OR AT EMAIL: CHANSKOM@WESTMELBOURNE.GOV OR BY MAIL AT 2240 MINTON ROAD, WEST MELBOURNE, FLORIDA 32904, ATTN: CITY CLERK.

SECTION 18 – E-VERIFY REQUIREMENTS

- 18.1 In accordance with Florida Statute § 448.095, the County agrees as follows:
- (a) The County utilizes the E-Verify system to verify work authorization status of all newly hired employees. The County shall provide sufficient evidence of registration with the E-Verify system before commencing its performance under this Agreement.
 - (b) If the County enters into a contract with a subcontractor in the performance of this Agreement, the County shall require an affidavit from each such subcontractor stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The County must retain a copy of the affidavit for the duration of this Agreement and any renewals hereof.
 - (c) The City is required to terminate this Agreement if the City has a good faith belief that the County has knowingly violated Florida Statute § 448.09(1), prohibiting the employment of unauthorized aliens.
 - (d) If the City has a good faith belief that a subcontractor knowingly violated Florida Statute § 448.09(1), prohibiting the employment of unauthorized aliens, the City shall promptly notify the County and order the County to immediately terminate the contract with the subcontractor.

- (e) A contract terminated pursuant to this section is not a breach of contract and shall not be considered as such. The County or a subcontractor may file an action in a circuit court or county court in and for Brevard County to challenge said termination no later than twenty (20) calendar days after the date on which the Agreement is terminated.

SECTION 19 – SCRUTINIZED COMPANIES

- 19.1 The County shall ensure that any subcontractor(s) utilized to carryout Work related to this Agreement complies with Florida Statute § 287.135.

IN WITNESS WHEREOF, the CITY OF WEST MELBOURNE, a Florida municipal corporation and BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, have caused this Agreement to be executed on the day and year last written below.

ATTEST:


Cynthia S. Hanscom, City Clerk



OWNER:

CITY OF WEST MELBOURNE, a Florida municipal corporation

By:



Scott Morgan, City Manager

As approved by Council on March 15, 2022

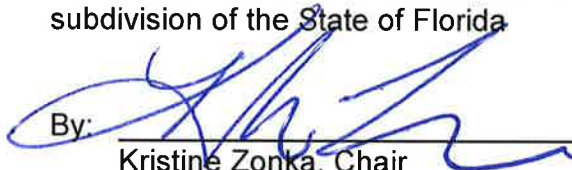
Reviewed for legal form and sufficiency:


Morris Richardson, City Attorney

COUNTY:


BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida

By:


Kristine Zonka, Chair

As approved by the Board on May 17, 2022

ATTEST:


Rachel Sadoff, Clerk

Reviewed for legal form and content
for Brevard County:

Deputy County Attorney