

AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2018 by and between the **CITY OF ORLANDO, FLORIDA**, a Florida municipal corporation (“CITY”) and **VANASSE HANGEN BRUSTLIN, INC.**, a Massachusetts corporation (“ENGINEER” or Consultant).

WHEREAS, the ENGINEER was competitively selected pursuant to a Request for Qualifications Statements (**RQS18-0002**) issued by the City to provide transportation engineering and other professional engineering services as further described below, for the project known as the Orlando Urban Trail Gap and Extension Project (“Project”); and

WHEREAS, the CITY and the ENGINEER now wish to enter into this Agreement for the ENGINEER's services for the Project; and

WHEREAS, the ENGINEER is willing and able to perform the engineering services for the CITY on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and given one party to the other, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

SECTION 1 SCOPE OF SERVICES

The CITY’s RQS and addendums issued thereto (collectively the “RQS”), which are attached hereto as Appendix I and incorporated herein by this reference, set forth in general terms the nature of the Project; certain specific Project terms, conditions and requirements; and the general scope of services which may be provided by the ENGINEER on the Project. Based upon the RQS and the ENGINEER’s Response thereto, the parties have negotiated and agreed upon the scope of services, attached hereto and incorporated herein, by reference, as Exhibit I (hereinafter the “Services”). ENGINEER’s Services shall include serving as the CITY’s professional engineering representative for the Project, providing professional consultation and advice, and by itself or with its Subconsultants. The ENGINEER shall perform any and all Project Services in a timely, efficient and cost effective manner and in accordance with the generally accepted standards of the engineering profession subject to the terms of this Agreement and the RQS. In the event of any conflict between the terms of this Agreement and the City’s RQS, the terms of this Agreement (including all attachments and amendments hereto) shall control.

SECTION 2 FEE

The lump sum fee of Eight Hundred Ten Thousand Six Hundred Forty Seven and 05/100’s Dollars (\$810,647.05) fee (“Fee”) for the Services has been agreed to by the parties, and the

documentation supporting such Fee is attached hereto and incorporated herein, by reference, as Exhibit II. The parties acknowledge and agree that said fee was negotiated in good faith based upon overhead rates (indirect rates) and direct salary multipliers which were (are) not capped. The ENGINEER will invoice the CITY monthly, based upon the Services performed at the time of submission of the invoice, billed in accordance with the Fees set forth herein. The City will perform a determination of allowable costs in accordance with the Federal cost principles for services rendered under the contract.

SECTION 3 TERM

The term of this Agreement shall be completed by the end of business (5:00 p.m.) on June 24, 2019. It is also agreed that the CITY shall have an option for extension of this Agreement, as necessary to complete the present scope of services.

SECTION 4 CITY'S RESPONSIBILITIES

4.1. Requirements for the Project

The CITY shall provide all criteria and full information as to the CITY's requirements for the Project in a timely manner, including design objectives and constraints; space, capacity and performance requirements; flexibility and expandability matters; and any budgetary limitations; and furnish copies of all design and construction standards which the CITY will require to be included in the drawings and specifications.

4.2. Information Pertinent to the Project

The CITY shall assist the ENGINEER by placing at the ENGINEER's disposal all available information pertinent to the Project (including previous reports and any other data relative to design or construction of the Project), and the CITY shall advise the ENGINEER as to what information, if any, the CITY believes to be accurate. The ENGINEER is ultimately responsible for satisfying itself as to the accuracy of any information provided and, furthermore, the ENGINEER is responsible for bringing to the CITY's attention, for the CITY's resolution, any material inconsistencies or errors in such information which come to the ENGINEER's attention. If the CITY requires the ENGINEER's assistance in resolving any error or inconsistency, such Services may be provided by mutual agreement of the parties.

4.3. Access to Property.

The CITY shall arrange for access to and make provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform its Services.

4.4. City Project Manager

The CITY's Director of Public Works ("Director") or his designee shall appoint a Project Manager for this Project. Except as otherwise expressly provided in this Agreement, the Project Manager shall issue any and all written authorizations to the ENGINEER that the Project may require, or that may otherwise be defined or referred to in this Agreement. The Project Manager shall also, 1) act as the CITY's representative with respect to the Services rendered hereunder; 2) transmit instructions to and receive information from the ENGINEER; 3) communicate the CITY's policies and decisions to the ENGINEER regarding the Services; 4) determine, initially, whether the ENGINEER is fulfilling its duties, responsibilities, and obligations hereunder; and 5) determine, initially, the merits of any allegation by the ENGINEER respecting the CITY's non-performance of any Project obligation. All determinations made by the Project Manager, as outlined above, shall be final and binding upon the ENGINEER in regard to further administrative review, but shall not be binding upon the ENGINEER in regard to general appearances before or appeals to the CITY, or appearances before or appeals to a court of competent jurisdiction.

4.5. Notice and Extension of Term

The CITY shall give prompt written notice to the ENGINEER whenever the CITY observes or otherwise becomes aware of any development that affects the scope or timing of the ENGINEER's Services. If the ENGINEER has been delayed in completing its Services through no fault or negligence of its own, and, as a result, will be unable to complete performance fully and satisfactorily under the provisions of this Agreement, then, in the Project Manager's sole and reasonable discretion, and upon the submission to the Project Manager of evidence of the causes of the delay, the ENGINEER shall be granted an extension of its Project schedule equal to the period the ENGINEER was actually and necessarily delayed.

SECTION 5 PAYMENTS TO ENGINEER

5.1. General

5.1.1. The CITY will pay the ENGINEER for the Services as detailed in each of the ENGINEER's narrative monthly invoices (Invoices), and in accordance with the schedule of Fees (including reimbursable expenses) as further defined below in Exhibit II. The ENGINEER must submit with each Invoice a detailed description of the Services for which payment is sought, an updated CD-ROM of the design files and an updated Project schedule in detail and format acceptable to CITY. Prior to submission of each of the Invoices, ENGINEER shall comply with the monthly reporting requirements of Subsection 15.16.3.

5.2. Reimbursable Expenses

"Reimbursable Expenses" means the actual, necessary and reasonable expenses incurred directly or indirectly in connection with the Project for: transportation and subsistence incidental thereto

for existing facility and Subconsultant visitation; toll telephone calls and telegrams; reproduction of reports, drawings and specifications, and similar Project-related items, all in accordance with the CITY's written procurement policies and directives.

5.3. Payments by Owner

5.3.1. All Services' payments (Payment) shall be made by the CITY to the ENGINEER in accordance with the Florida Local Government Prompt Payment Act laws upon receipt of a proper Invoice from the Consultant, detailed description of Services performed, updated design files in CD-ROM format, updated Project schedule and the monthly reporting required in Subsection 15.16.3 (Payment Period), unless, within the Payment Period, the CITY, 1) notifies the ENGINEER of an objection to the Payment amount, and 2) either provides the ENGINEER with a determination of the proper Payment, or 3) requests further information from the ENGINEER so that a proper Payment can be derived and agreed upon by the parties. The ENGINEER shall submit an invoice for payment to the CITY for those specific tasks as described in the Scope of Services that were completed during that invoicing period. The ENGINEER shall make payments to its Subconsultants for satisfactory performance of the Subconsultants' services no later than thirty (30) days from receipt of Payment from the CITY. For those specific tasks or services priced on a lump sum basis on Exhibit II that were partially completed, progress payments shall be invoiced in proportion to the percentage of completed work on those specific tasks or services.

5.3.2. The CITY's objection to the Payment amount shall be accompanied by the CITY's remittance of any undisputed portion of the Payment. If the objection is resolved in favor of the ENGINEER, then the CITY shall pay the ENGINEER the amount so determined, minus any Payment amount previously paid to the ENGINEER with respect to the objection, plus interest at one percent (1%) simple interest, per month on the unpaid amount. If it is determined that the CITY has overpaid the ENGINEER, then the ENGINEER shall, within thirty (30) calendar days, refund to the CITY the overpayment amount, and interest, at one percent (1%) simple interest, per month, and the ENGINEER shall not be held to be in breach of this Agreement thereby.

5.4. Intentionally Deleted.

5.5. Records

The ENGINEER also agrees to maintain, and to require each Subconsultant to maintain, complete and accurate books and records (Books) in accordance with sound accounting principles and standards, and relating to all Services, and the related costs and expenditures to the CITY that have been contracted for and paid during the life of this Agreement. The Books shall identify the Services rendered during each month of the Agreement, the date that each Project expense was incurred, and whether the expense was Service or reimbursable-related. Unless a different period is required by any federal, state, or other governmental law, regulation, policy, or contractual or grant requirement or provision, ENGINEER and its Subconsultants shall retain all records related to the Agreement for five (5) years after receipt of final payment under the Agreement and all other pending matters related to the Agreement are closed. If any litigation, claim, negotiation, audit or other action involving the records has been started before

the expiration of the 5-year period or other applicable period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the retention period, whichever is later.

5.6. Late Payment

If the CITY fails to make any payment due the ENGINEER for Services and expenses within forty-five (45) days after the beginning of the Payment Period, the ENGINEER may, after giving seven (7) calendar days' prior written notice to the CITY, suspend Services under this Agreement until the ENGINEER has been paid, in full, amounts due it for Services and expenses. Any portion of an Invoice that is objected to or questioned by the CITY in accordance with Subsection 5.3 shall not be considered due for the purposes of this Subsection.

5.7. Overtime

Overtime will be paid by the CITY only if authorized in advance by the CITY's Project Manager for work to be performed to meet a particular deadline for which there is insufficient time to accomplish the task during normal hours, through no fault of the ENGINEER.

5.8. Scope, Cost and Fee Adjustment

5.8.1. General. The CITY may at any time notify the ENGINEER of requested changes to the scope of Services as set forth in this Agreement. The notification shall state the scope modification and an adjustment of the Fee specified in Exhibit II to reflect such modification. The Fee adjustment due to modification in the scope of Services may be calculated utilizing the same method of compensation applicable to the Agreement prior to the scope modification. The ENGINEER and the CITY understand that, unless the Fee adjustment is within a previously approved budget, any change to the scope of Services must be approved or authorized by the CITY. If the Fee adjustment is within a previously approved budget to the scope of Services for the overall Project, the change may be approved in writing by the CITY's Project Manager.

5.8.2. Scope Reduction. The Project Manager shall have the sole right to reduce (or eliminate, in whole or in part) the scope of the Project at any time and for any reason, upon written notice to the ENGINEER specifying the nature and extent of the reduction. In such event the ENGINEER shall be fully compensated for the Services already performed. The ENGINEER shall also be compensated for the Services remaining to be done and not reduced or eliminated on the Project, and payment to the ENGINEER for revising the Project documents shall be made pursuant to an amendment to this Agreement.

5.8.3. Scope Suspension. The Project Manager may, at any time and for any reason, direct the ENGINEER to suspend work (in whole or in part) under this Agreement. Such direction shall be in writing, and shall specify the period during which Services shall be stopped. The ENGINEER shall resume its Services upon the date specified, or upon such other date as the Project Manager may thereafter specify in writing. The period during which the Services are stopped by the CITY shall be added to the term; provided, however, that any work stoppage not approved or caused by the action or inaction of the CITY shall not give rise to any claim against the CITY by

the ENGINEER. The CITY agrees to compensate the ENGINEER for his reasonable and provable costs, including demobilization, remobilization, and Subconsultant expenses incurred attributable to any delay approved or caused by the actions or inaction of the CITY.

5.9. Termination

Upon the termination of this Agreement, the ENGINEER shall prepare a final and complete Payment Statement for all Services and Fees incurred since the posting of the last Payment Statement, and through the date of termination. The final Payment Statement shall be subject to all of the provisions described in this Section 5.

5.10. Final Payment

The acceptance by the ENGINEER, its successors, or assigns, of any final Payment due upon the termination of this Agreement, shall constitute a full and complete release of the CITY from any and all known claims or demands regarding further compensation for authorized Services rendered prior to such final payment that the ENGINEER, its successors, or assigns have or may have against the CITY under the provisions of this Agreement, unless otherwise previously and properly filed pursuant to the provisions of this Agreement, or in a court of competent jurisdiction. This Subsection does not affect any other portion of this Agreement that extends obligations of the parties beyond final Payment.

5.11 Consultant's Estimate of Probable Construction Cost.

5.11.1 General.

If the CITY requests that a Project construction cost estimate be given by the ENGINEER as part of preliminary or final design Services, then the ENGINEER shall develop an ENGINEER's estimate of probable construction cost at such points in the design phase as defined herein or in the Scope of Services. The construction cost of the Project (Construction Cost Estimate) means the estimated total cost to the CITY by contractors for the construction of those portions of the entire Project designed and specified by the ENGINEER. The Construction Cost Estimate shall only include construction costs from contractors for construction work and materials and will not include other non construction costs such as the ENGINEER's compensation and expenses, the cost of land rights-of-way, or compensation for or damages to properties, nor will it include the CITY's legal, accounting, insurance-counseling, or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other non-construction services to be provided by others to the CITY. Since the ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractors' methods of determining prices, or over competitive bidding or market conditions, the ENGINEER's opinions of Construction Cost Estimate provided for hereinabove are to be made on the basis of the ENGINEER's experience and qualifications, and represent the ENGINEER's best judgment as an experienced and qualified professional which is familiar with the construction industry; but the ENGINEER cannot and does not guarantee that proposals, bids or actual Construction Costs will not vary from opinions of probable cost prepared by the ENGINEER.

5.11.2 Construction Cost.

5.11.2.1 The acceptance by the CITY at any time during the provision of Services of a revised opinion of Construction Cost Estimate in excess of the then established cost limit will constitute a corresponding revision in the Construction Cost Estimate limit to the extent indicated in such revised opinion.

5.11.2.2 If a Construction Cost Estimate is established, the ENGINEER will be permitted, with review and approval by the CITY, to determine what types of materials, equipment and component systems are to be included in the drawings and specifications and to make reasonable adjustments in the general scope, extent and character of the Project to bring it within the cost estimate.

5.11.2.3 If the lowest bona fide proposal or bid exceeds the established Construction Cost Estimate by 15%, the CITY may, (1) give written approval to increase such Construction Cost Estimate, (2) authorize negotiating or rebidding of the Project within a reasonable time, or (3) cooperate in revising the Project's general scope, extent or character to the extent consistent with the Project's requirements and with sound professional practices. In the case of (3), the ENGINEER shall modify the drawings and specifications as necessary to bring the construction cost within the Construction Cost Estimate. In lieu of other compensation for Services in making such modifications, the CITY shall pay the ENGINEER's cost of such Services, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to the ENGINEER on account of such Services; and the ENGINEER's providing these modification Services shall be the extent of the ENGINEER's cost-estimating liability as memorialized in this Subsection.

SECTION 6 SETTLEMENT OF CLAIMS

The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, as well as the venue for any litigation between the parties, shall be Orange County, Florida.

SECTION 7 TERMINATION

7.1. General

This Agreement may be terminated by the mutual agreement of the parties, or as may otherwise be provided in Section 7.2 below. In the event of the termination of this Agreement, any liability of one party to the other arising out of any Services rendered, or any act or event occurring prior to the termination, shall not be terminated or released.

7.2. Failure to Perform or for the Convenience of the CITY

In addition to any other termination provisions that may be provided in this Agreement, the CITY may terminate this Agreement in whole or in part if the ENGINEER substantially fails to perform any obligation under this Agreement and does not remedy the failure within twenty (20) calendar days after receipt by the ENGINEER of written demand from the CITY to do so, unless, however, the nature of the failure is such that it cannot, in the exercise of reasonable diligence, be remedied within twenty (20) calendar days, in which case the ENGINEER shall have such time as is reasonably necessary to remedy the failure, provided the ENGINEER promptly takes and diligently pursues such actions as are necessary therefor. Any termination by the CITY for substantial failure to perform may also result in suspension or debarment of the ENGINEER pursuant to terms of the City's Procurement Code. The CITY may also, at its convenience, terminate this Agreement upon twenty (20) calendar days notice to the ENGINEER. The ENGINEER may terminate this Agreement if the CITY substantially fails to perform any obligation under this Agreement, and does not remedy the failure within twenty (20) calendar days after receipt by the CITY of written demand from the ENGINEER to do so, unless, however, the nature of the failure is such that it cannot, in the exercise of reasonable diligence, be remedied within twenty (20) calendar days, in which case the CITY shall have such time as is reasonably necessary to remedy the failure, provided it promptly takes and diligently pursues such actions as are necessary therefor.

7.3. Payment Upon Termination

Upon the termination of this Agreement, the CITY shall pay ENGINEER for Services actually rendered and contracted for under this Agreement, and those reasonable and provable Fees actually incurred by ENGINEER for Services prior to the effective date of termination. Such payments, however, shall be, 1) reduced by an amount equal to any additional costs incurred by the CITY as a result of the termination if the Agreement is terminated for cause by the CITY or 2) increased by an amount equal to the reasonable and provable expenses incurred by ENGINEER (lost profit and overhead shall not be included) to conclude its Services that are directly attributable to the termination, and for which ENGINEER is not otherwise compensated if the Agreement is terminated for the convenience of the CITY.

7.4. Delivery of Materials Upon Termination

In the event of termination of this Agreement by the CITY, prior to the ENGINEER's satisfactory completion of all the Services described or alluded to herein, the ENGINEER shall promptly furnish the CITY, at no additional cost or expense, with one (1) copy of the following items (Documents), any or all of which may have been produced prior to and including the date of termination: data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, CD-ROM design files, record drawings; and any and all other documents, instruments, information, and materials (whether or not completed) generated or prepared by the ENGINEER, or by any Subconsultant, in rendering the Services described herein, and not previously furnished to the CITY by the ENGINEER pursuant to this Agreement. The Documents shall be the sole property of the CITY, and the CITY shall be vested with all rights provided therein of whatever kind and however created. The ENGINEER shall also require that all such Subconsultants agree in writing to be bound by the provisions of this Subsection.

SECTION 8 MATERIALS, REUSE OF DOCUMENTS, AND CONFIDENTIALITY

8.1. General

One reproducible copy of all data, reports, summaries, memoranda, and other documents, instruments, information, and materials (whether or not completed) generated or prepared by the ENGINEER (Written Work) for the Services rendered hereunder, including but not limited to any inspector's reports, job files, test reports, copies of shop drawings, construction photographs, cost control and scheduling data, computer printouts, Contractors' submittals, CD-ROM or other electronic design files, CD-ROM or other electronic design files as modified by as-built information; shall be supplied to the CITY (at the CITY's request during the term of the Agreement, upon termination, and with the ENGINEER's final payment Invoice) by the ENGINEER, and at the CITY's cost. The final work product of all such materials (e.g., signed and sealed plans and specifications which record design and/or as-built conditions in written and CD-ROM formats, studies, analyses, and so forth) along with all formal ENGINEER/CITY correspondence concerning the Project (e.g. letters, tapes, memoranda, etc.) shall be the sole property of the CITY. All materials described above shall be retained by the ENGINEER for the statutory period (§95.11, Fla. Stat., as it may be from time-to-time amended). The Written Work shall be a "work made for hire" and the CITY shall be vested with all rights of ownership of the Written Work whatever kind and however created that may be in existence thereto.

8.2. Reuse of Documents and Information

Any use by the CITY of such materials described in Subsection 8.1 in connection with a project other than that for which such materials were prepared, without the prior written consent of the ENGINEER, shall be at the CITY's sole risk, and the ENGINEER shall have no responsibility or liability related thereto, except in those instances which the ENGINEER is re-employed by the CITY for that other project. In the event that any work performed pursuant to this Agreement is funded directly or indirectly by the federal government, the federal awarding agency (and, if applicable, any intermediary state agency) shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for governmental purposes (i) the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant, and (ii) any rights of copyright to which a grantee, subgrantee or a contractor (including ENGINEER) purchases ownership with grant support. The City, State of Florida, and federal government shall have the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award, and authorize others to receive, reproduce, publish or otherwise use such data for Federal purposes. ENGINEER is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR Part 401.

SECTION 9 NOTICES

All notices denominated as such by this Agreement, or the City Code, or Florida law, required to be given to the ENGINEER hereunder shall be in writing, and shall be given by hand-delivery or United States mail, postage prepaid, addressed to the ENGINEER:

Mark Bertoncini, P.E.
Director of Transportation
Vanasse Hangen Brustlin, Inc.
225 East Robinson Street, Suite 300
Orlando Florida 32801

All notices required to be given to the CITY shall be in writing, and shall be given by hand-delivery or United States mail, postage prepaid, to the CITY's Director and Chief Procurement Officer separately, at:

Richard Howard, P.E.
Public Works Director
City of Orlando
City Hall, 8th Floor
400 South Orange Avenue
Orlando, Florida 32801

David Billingsley, CPSM, CPM
Chief Procurement Officer
City of Orlando
City Hall, 4th Floor
400 South Orange Avenue
Orlando, Florida 32801

Either party may change its address, for the purposes of this Subsection, by written notice to the other party given in accordance with the provisions of this Subsection.

SECTION 10 CONFLICTS OF INTEREST

The ENGINEER represents and warrants unto the CITY that no officer, employee, or agent of the CITY has any interest, either directly or indirectly, in the business of the ENGINEER to be conducted hereunder in violation of applicable law. The ENGINEER further represents and warrants to the CITY that it has not employed (or retained for a commission, percentage, brokerage, contingent fee, or other consideration) any company or person, other than a bona fide employee working solely for the ENGINEER, to solicit or secure this Agreement, and that it has not paid, or agreed to pay, or given or offered any fee, contribution, donation, commission, percentage, brokerage, consideration, gift, loan, or anything of value (Value) to any person, company, corporation, individual, organization or firm, other than bona fide Personnel working solely for the ENGINEER, in connection with, consideration for, or contingent upon, or resulting

from the award or making of this Agreement. Further, the ENGINEER also acknowledges that it has not agreed, as an expressed or implied condition for obtaining this Agreement, to employ or retain the services of any person, company, individual or firm in connection with carrying out this Agreement. It is absolutely understood and agreed by the ENGINEER that, for the breach or violation of this Subsection, the CITY shall have the right to terminate this Agreement without liability and at its sole discretion, and to deduct from the contract price, or to otherwise recover, the full amount of any Value paid by the ENGINEER.

The City maintains written code of standards of conduct governing the performance of its employees engaged in the award and administration of engineering and design related services contracts designed to prevent, identify, and mitigate conflicts of interest in accordance with 2 CFR 200.112, 23 CFR 1.33, and 23 CFR 172.7. These standards of are located in the City's Policy and Procedure 800.5 (Ethics) and Policy and Procedure 2320.1 (Management & Administration of Grants and other Types of Financial Assistance) which can found on the City's website at:

<http://www.cityoforlando.net/cityclerk/policies-procedures/>

SECTION 11 WAIVER OF CLAIM

The ENGINEER and the CITY hereby mutually waive any claim against each other, their elected or appointed officials, agents, and employees, for any loss of anticipated profits caused by any suit or proceedings brought by any third party directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable, or delaying the same, or any part thereof, from being carried out.

SECTION 12 CITY REPRESENTATIVE

The CITY's Director of Public Works or his authorized designee(s) shall act as the CITY's agent with respect to the Services to be rendered by the ENGINEER hereunder, and, except as expressly set forth below, shall have full authority to take all actions on behalf of the CITY related to this Contract, including but not limited to transmitting all instructions, receiving information, notifying ENGINEER of any breaches of this Contract or improperly performed work, and communicating the CITY's policies and decisions to the ENGINEER. The CITY's Director of Public Works authority to act shall be in addition any authority granted to specific CITY employees in other sections of this Contract. Any action that may be taken by the CITY's Director of Public Works or his designee related to this Contract, may also be taken by the CITY's Chief Procurement Officer or her designee. Notwithstanding the preceding, any final action by the CITY to terminate this Contract in whole, whether for cause or convenience, may only be taken by the CITY's Chief Procurement Officer or her designee; provided, however, that nothing herein shall be deemed to preclude the Director of Public Works or his designee from

suspending any or all work or from modifying or terminating specific portions of authorized work in his discretion.

SECTION 13 ENGINEER'S PROJECT TEAM

The ENGINEER shall assign members of its staff as the ENGINEER's Principal-in-Charge, Project Manager and Key Personnel (Project Team), who shall collectively devote such working time and attention as may be reasonably required to ensure that the Services are properly, economically, and efficiently performed. The ENGINEER shall indicate to the CITY the authority and powers that the ENGINEER's Project Team shall possess during the life of the Project. The ENGINEER agrees that the CITY shall have the right to approve the ENGINEER's Project Team, and that the ENGINEER shall not change any member of its Key Personnel without written notice to the CITY. Furthermore, if any member of the ENGINEER's Project Team is removed from his Project duties, or his employment is otherwise terminated or curtailed by the ENGINEER, or if the ENGINEER's Project Team member terminates his employment with the ENGINEER, then the ENGINEER shall promptly replace its Project Team member with a person of comparable experience and expertise, who shall also be subject to the CITY's approval. The CITY covenants that its approval shall not be unreasonably withheld.

SECTION 14 INDEMNIFICATION AND INSURANCE

14.1. Indemnification

14.1.1 ENGINEER's Indemnification of CITY. The ENGINEER shall indemnify and hold harmless the CITY, its employees and officers, from liabilities, damages, losses and costs including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the ENGINEER and other persons employed or utilized by the ENGINEER in the performance of the Agreement. This provision shall survive the expiration or termination of the Agreement.

14.2. Insurance

14.2.1 General.

ENGINEER and its Subconsultants of all tiers will be required at their own expense to maintain in effect at all times during the performance of Services insurance coverages with limits not less than those set forth below with insurers and under forms of policies satisfactory to the CITY. It shall be the responsibility of the ENGINEER to maintain the required insurance coverages and to require that Subconsultants maintain required insurance coverages at all times. Failure of ENGINEER to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation. The requirements specified herein as to types, limits, and CITY's approval of insurance coverage to be maintained by ENGINEER and its Subconsultants are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the ENGINEER and its Subconsultants under a contract. Any insurance carried by the CITY that

may be applicable shall be deemed to be excess insurance and the ENGINEER's insurance primary for all purposes despite any conflicting provision in the ENGINEER's policies to the contrary. Failure of the ENGINEER or its Subconsultants to maintain insurance as specified herein or to otherwise comply with the provisions of this Section 14.2 shall be grounds for termination of this Contract as specified in Section 7.

14.2.2 Certificates of Insurance.

Prior to commencing work, and as a condition precedent to the ENGINEER's and its Subconsultants' initiation of performance, the ENGINEER and its Subconsultants shall furnish the CITY with certificates of insurance as evidence that policies providing the required coverage and limits of insurance are in full force and effect. The certificates shall provide that any company issuing an insurance policy for the work under a contract shall provide not less than thirty (30) days advance notice in writing to the CITY and the Florida Department of Transportation prior to cancellation, termination, or material change of any policy of insurance (except for notice of non-payment of premium for which not less than ten (10) days advance notice in writing shall be required). In addition, the ENGINEER shall immediately provide written notice to the CITY upon receipt of notice of cancellation of an insurance policy or a decision to terminate an insurance policy. All certificates of insurance shall clearly state that all applicable requirements have been satisfied, including certification that the policies are of the "occurrence" type.

14.2.3. Additional Insureds.

All insurance coverages furnished except Professional Liability, Workers' Compensation and Employers' Liability shall include the CITY and its officers, elected officials, and employees as additional insureds with respect to the activities of the ENGINEER and its Subconsultants. The CITY shall not by reason of their inclusion under these policies incur liability to the insurance carrier for payment of premium for these policies.

14.2.4 Waiver of Subrogation.

The ENGINEER and its Subconsultants shall require their insurance carriers, with respect to all insurance policies, to waive all rights of subrogation against the CITY, its officers, elected officials, agents and employees and against other contractors and subcontractors.

14.2.5 Types of Coverage to be Provided.

The ENGINEER (and its Subconsultants to the same extent and on the same terms as set forth below for ENGINEER) shall maintain the following coverages and furnish the certificate(s) of insurance on the policies and renewals thereof which indicate that insurance coverage has been obtained meeting the requirements of the contract:

14.2.5.1 Workers' Compensation and Employer's Liability.

This insurance shall protect the ENGINEER against all claims under applicable state workmen's compensation laws. The ENGINEER shall also be protected against claims for injury, disease, or death of employees that, for any reason, may not fall within the provisions of a workmen's compensation law. This policy shall include an "all states" or "other states" endorsement. Exemption certificates shall be accepted if valid during the term of the contract, but only for those eligible corporate officers pursuant to Chapter 440 of the Florida Statutes. Proof of

workers' compensation coverage must still be provided for all employees, sub-contractors not eligible for exemption. The liability limits shall not be less than:

Workers' compensation: Statutory
Employer's Liability: \$100,000 each occurrence

14.2.5.2 Comprehensive Automobile Liability.

This insurance shall be written in comprehensive form and shall protect the ENGINEER and the additional insureds against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicle, and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. The liability limits shall not be less than:

Bodily injury and \$1,000,000 combined single
Property damage: limit each occurrence

14.2.5.3 Commercial General Liability.

This insurance shall be an "occurrence" type policy (excluding automobile liability) written in comprehensive form and shall protect the ENGINEER and the additional insureds against all claims arising from bodily injury, sickness, disease, or death of any person or damage to property of the CITY or others arising out of any act or omission of the ENGINEER or its agents, employees, or subcontractors. This policy shall also include protection against claims insured by usual bodily injury liability coverage, a "contractual liability" endorsement to insure the contractual liability assumed by the ENGINEER under this Contract with the City, and "completed Operations and Products Liability" coverage (to remain in force for 2 years after final payment and subsequent to project completion). If the ENGINEER's work, or work under its direction, requires blasting, explosive conditions, or underground operations, the comprehensive general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of structures, or damage to underground property. The liability limits shall not be less than:

Bodily injury and \$1,000,000 combined single
Property damage: limit each occurrence

14.2.5.4 ENGINEER's Errors and Omissions Policy.

The ENGINEER shall also purchase, maintain, and keep in full force, effect, and good standing, a professional liability/errors and omissions insurance policy having minimum limits of \$1,000,000, with a maximum deductible of \$100,000, or the ENGINEER shall provide the CITY with policy coverage wherein the insurer agrees to pay claims (up to the limits of coverage), and will thereafter recover the deductible from the insured-ENGINEER. The errors and omissions policy shall be in effect and shall insure the ENGINEER's performance on CITY projects.

14.2.6 City's Right to Inspect Policies.

The ENGINEER shall, upon thirty (30) days' written request from the CITY, deliver copies to the CITY, or make copies available for the CITY's inspection in Orange County, Florida, of any or all insurance policies that are required in this Contract. If the ENGINEER fails to deliver or

make such copies available to the CITY; or, if the ENGINEER fails to obtain new insurance or have a previous insurance policy reinstated or renewed; or, if the ENGINEER fails in any other regard to obtain coverage sufficient to meet the terms and conditions of this Contract; then the CITY may, at its sole option, terminate this Contract for cause pursuant to the terms and conditions of Section 7.

SECTION 15 MISCELLANEOUS PROVISIONS

15.1. Local, State and Federal Obligations

15.1.1. Discrimination. The ENGINEER, for itself, its successors-in-interest, and its assigns, and as a part of the consideration hereof, does hereby covenant and agree that, 1) in the furnishing of Services to the CITY hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to this Agreement on the grounds of such person's race, color, national origin, sex, age, disability, family or religious status; and 2) the ENGINEER shall comply with all existing requirements concerning discrimination imposed by any and all applicable local, state, and federal rules, regulations, or guidelines, and as such rules, regulations, or guidelines may be from time to time amended. In the event of a breach of any of the nondiscrimination covenants described in this Subsection, the CITY shall have the right to terminate this Agreement, without liability, as described above, and such right shall not be exercised unreasonably.

15.1.2. Compliance with Law. The ENGINEER and its employees shall promptly observe, comply with, and execute the provision of any and all present and future federal, state, and local laws, rules, regulations, requirements, ordinances, orders, mandatory guidelines, and mandatory directions, which may pertain or apply to the Services that may be rendered hereto, or to the wages paid by the ENGINEER to its employees. All design plans and specifications prepared by the ENGINEER as part of its Services shall comply with the federal Americans With Disabilities Act, Florida Americans With Disabilities Accessibility Implementation Act, and regulations and guidelines applicable thereto, all as may be from time to time amended. The ENGINEER shall also require, by contract, that all Subconsultants shall comply with the provisions of this Subsection.

15.1.3. Licenses. The ENGINEER shall, during the life of this Agreement, procure and keep in full force, effect, and good standing all necessary licenses, registrations, certificates, permits, and other permits, and other authorizations as are required by local, state, or federal law, in order for the ENGINEER to render its Services or work as described herein. The ENGINEER shall also require all Subconsultants to comply by contract with the provisions of this Subsection.

15.1.4. Compliance With New Regulations. The ENGINEER agrees that at such time as the local, state, or federal agencies modify their grant procedures in order for the CITY or the ENGINEER to qualify for local, state, or federal funding for the Services to be rendered by the ENGINEER, then the ENGINEER shall consent to and make such modifications or amendments in a timely manner. If the ENGINEER is unable to comply with applicable local, state, or

federal laws and regulations governing the grant of such funds for Services to be rendered herein, then the CITY shall have the right, by written notice to the ENGINEER, to terminate this Agreement without liability, as outlined in Section 7, above. Furthermore, if the ENGINEER's compliance with such laws, regulations, rules, or procedures causes a material change to a term or condition of this Agreement, then the CITY agrees, upon sufficient proof of material changes as may be presented to it by the ENGINEER, to attempt to negotiate an amendment to the Agreement with the ENGINEER.

15.1.5. License Fee and Royalties. The ENGINEER agrees that any invention, design, process, product, device, proprietary system, or proprietary process for which an approval (of any type) may be necessary, shall be paid for by the CITY, but shall be secured by the ENGINEER (or, at the ENGINEER's direction, by the contractor or Subconsultant during the ENGINEER's construction phase services).

15.1.6 The ENGINEER shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of all new employees hired by the ENGINEER during the term of the Agreement and shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement.

15.2. Engineer Not Agent of City

The ENGINEER is not authorized to act as the CITY's agent hereunder and shall have no authority, expressed or implied, to act for or bind the CITY hereunder, either in ENGINEER's relations with Subconsultants, or in any other manner whatsoever except as elsewhere provided for in this Agreement.

15.3. Subconsultants

15.3.1. General. The ENGINEER shall have the right, conditioned upon the CITY's prior consent, which shall not be unreasonably withheld, to employ other firms, consultants, contractors, subcontractors, and so forth (Subconsultants); provided, however, that the ENGINEER shall, 1) inform the CITY as to what particular Services the Subconsultants shall be employed to do; 2) inform the CITY as to what extent (what percentage) of the total Project Services each Subconsultant shall be employed to do; 3) be solely responsible for the performance of all of its Subconsultants, including but not limited to their maintenance of schedules, correlation of Services, or both of these things, and the resolution of all differences between them; 4) promptly terminate the use and services of any Subconsultants upon written request from the CITY (which may be made for the CITY's convenience); 5) promptly replace each such terminated Subconsultant with a Subconsultant of comparable experience and expertise; 6) cause a Subconsultant to remove any employee(s) from a Project as the CITY shall request (again for the CITY's convenience); and 7) require that such employee(s) shall be promptly replaced by other employee(s) of comparable experience and expertise and who are otherwise acceptable to the CITY. After the Subconsultant has received notice of the termination, or two (2) business days after the CITY has notified the ENGINEER in writing of

the required termination of the Subconsultant or the Subconsultant's employee, whichever shall occur first, the CITY shall have no obligation to reimburse the ENGINEER for the Services subsequent to the notice of termination of any Subconsultant or employee who may be terminated pursuant to the provision of this Subsection; provided, however, that the CITY shall reimburse the ENGINEER for the ENGINEER's reasonable and provable Subconsultant demobilization or remobilization costs, as defined in Subsection 7.3 if the Subconsultant is terminated for convenience; and provided, further, that the ENGINEER shall receive no reimbursement for demobilization costs if a Subconsultant is terminated for cause. It is also understood that the CITY does not, by accepting a Subconsultant, warrant or guarantee the reliability or effectiveness of that entity's performance. ENGINEER shall require all Subconsultants to comply with the terms of this Agreement, the City's LAP Agreement with the Florida Department of Transportation, and all requirements imposed by applicable federal, state, and local laws and regulations, include the "Certification Regarding Debarment, Suspension, Ineligibility and Volunatry Exclusion – Lower Tier Covered Transactions," in 49 C.F.R. Part 29, when applicable.

15.3.2. Work Outside Scope and Time of Payment. The CITY shall have no obligation to reimburse the ENGINEER for the services of any Subconsultant that may be in addition to the Services, or for those Subconsultant Services not previously made known to the CITY, or that are otherwise outside of the scope of the Project unless and until the CITY has given written approval of such reimbursement. The CITY shall have no liability or obligation to the ENGINEER for Services rendered by a Subconsultant pursuant to any Engineer-Subconsultant agreement, and the ENGINEER also agrees to pay all such Subconsultants for their Project-related Services within thirty (30) calendar days after the ENGINEER's receipt of payment, from the CITY, for work performed by the Subconsultants, unless such payment is disputed by the ENGINEER, and the CITY receives written notice thereof.

15.3.3. Subconsultant Contracts. The ENGINEER shall provide a copy of all relevant provisions of this Agreement to all Subconsultants hired by it, or for which it may have management responsibilities and shall inform all Subconsultants that all Services performed hereunder shall strictly comply with the Agreement terms and provisions. The ENGINEER shall also furnish the CITY, upon demand, with a copy of all ENGINEER Subconsultant contracts.

15.3.4. The ENGINEER shall comply with the requirements of 49 CFR 26 and take all necessary affirmative steps when subcontracting to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, including but not limited to placing such firms when qualified on solicitation lists and soliciting them as potential sources whenever possible.

15.4. Assignment and Delegation

The CITY and the ENGINEER bind themselves and their partners, successors, executors, administrators, and assigns, to the other party of this Agreement in respect to all duties, rights, responsibilities, obligations, provisions, conditions, and covenants of this Agreement; except that the ENGINEER shall not assign, transfer, or delegate its rights or duties, or both of these things, in this Agreement without the prior consent of the CITY. The CITY has the absolute right to

withhold such consent at its convenience, and, furthermore, if the ENGINEER attempts to assign, transfer, or delegate its rights or duties in violation of these provisions without the CITY's consent, then the CITY may terminate this Agreement as a breach of contract by the ENGINEER and a failure by the ENGINEER to substantially perform its obligations hereunder, and any such assignment shall be null, void, and of no legal effect whatsoever. The CITY shall have the right to assign its rights (or any part of them) or to delegate its duties and obligations (or any part of them) to another entity that shall be bound by all applicable terms and conditions as provided in this Agreement.

15.5. Audits

15.5.1. Periodic Auditing of ENGINEER'S Books. The Books may (but need not) be kept separate and apart from the ENGINEER's other books; but the CITY shall have the right, at any reasonable time and through any of its designated agents or representatives, to inspect and audit the Books for the purpose of verifying the accuracy of any Payment Statement or Completion Report. In lieu of the above and upon request of the CITY, the ENGINEER shall prepare an audit (for the most recent fiscal year) for the CITY, which shall include the ENGINEER's paid salary, fringe benefits, general and administrative overhead costs, and the total amount of money paid by the CITY to the ENGINEER. The Fiscal Report shall be certified as true and correct by, and shall bear the signature of, the ENGINEER's chief financial officer or its certified public accountant.

15.5.2. Overcharge. If it is established by the audit, or by any other means, that the ENGINEER has over-billed or overstated its Fees (Overcharge) to the CITY, then the amount of any Overcharge shall be refunded by the ENGINEER, together with the CITY's reasonable and provable costs (including the auditing expenses) in discovering the Overcharge and effecting its repayment.

15.5.3. Retention of Books. Unless a longer time is required by any federal, state, or other governmental law, regulation, policy, or grant requirement, the ENGINEER shall retain the Books, and make them available to the CITY as specified above, for the longer of (i) five (5) years following Final Payment or termination of this Agreement, whichever is later, or (ii) the conclusion of all audits and litigation (including all appeals) related to this Agreement.

15.6. Prohibition Against Contingent Fees

The ENGINEER warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the ENGINEER to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the ENGINEER, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

15.7. Entire Agreement

This Agreement, including the Exhibits hereto, constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements.

15.8. Truth-in-Negotiations

The ENGINEER shall execute a Truth-in-Negotiation Certificate in the form attached hereto and made a part hereof, by reference, as Exhibit III. It is agreed by the ENGINEER that the Project Fee, and any additions thereto, shall be adjusted to exclude any significant sums [plus interest at one percent (1%) per month simple interest on the sums, from the date of payment by the CITY] by which the CITY determines that the Fee was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.

15.9. Amendment

This Agreement may be amended or modified only by a written instrument duly authorized and executed by the parties.

15.10. Validity

The validity, interpretation, construction, and effect of this Agreement shall be in accordance with and governed by the laws of the State of Florida, only. In the event any provision hereof is determined to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect. To that extent, this Agreement is deemed severable.

15.11. Headings

The headings of the Sections or Subsections of this Agreement are for the purpose of convenience only, and shall not be deemed to expand, limit, or modify the provisions contained in such Sections or Subsections.

15.12. Timeliness

The CITY and the ENGINEER acknowledge and understand that time is of the essence in this Agreement.

15.13. Force Majeure

The parties acknowledge that adverse weather conditions, acts of God, or other unforeseen circumstances of a similar nature, may necessitate modifications to this Agreement, such modifications to include, but not limited to the Project's Services, term, and Fee. If such conditions and circumstances do in fact occur, then the CITY and ENGINEER shall mutually agree, in writing, to the modifications to be made to this Agreement.

15.14. Rights Cumulative; No Waiver

No right or remedy herein conferred upon or reserved to either party hereto is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of a default hereunder. The failure of either party hereto to insist, at any time, upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties hereof may be exercised from time to time and as often as may be deemed expedient by the parties hereto, as the case may be.

15.15. Public Entity Crime

Any person or affiliate, as defined in 287.133 of the *Florida Statutes*, shall not be allowed to contract with the CITY, nor be allowed to enter into a subcontract for work on this Agreement, if such a person or affiliate has been convicted of a public entity crime within three (3) years of the date this Agreement was advertised for proposals, or if such person or affiliate was listed on the State's convicted vendor list within three (3) years of the date this Agreement was advertised, whichever time period is greater. A public entity crime means a violation of any state or federal law with respect to and directly related to the transaction of business with any public entity or agency (federal, state or local), involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, forgery, falsification of records, receiving stolen property or material misrepresentation. Any Agreement with the CITY obtained in violation of this Section shall be subject to termination for cause. A Subconsultant who obtains a subcontract in violation of this Section shall be removed from the Project and promptly replaced by a Subconsultant acceptable to the CITY.

15.16. DBE Participation

15.16.1. The City of Orlando is receiving U.S. Department of Transportation (“USDOT”) funding from the Florida Department of Transportation (“Department”) for the Services to be provided by the ENGINEER. It is the policy of USDOT, the Department, and the City that DBEs have an equal opportunity to participate in the performance of federally financed contracts and subcontracts. To achieve this goal, DBEs are encouraged to compete for procurement contracts and shall have full access to these opportunities. Pursuant to the funding requirements of the Department’s grant, disadvantaged business enterprise (“DBE”) utilization shall be in compliance with applicable federal laws and regulations. The Department has established a DBE program in accordance with such federal laws and regulations. The CITY shall participate in the Department’s DBE race neutral program for this Project.

15.16.2. There is no specific DBE participation goal on this Project; however, the Department has an overall 10.65% DBE goal it must achieve. In order to assist the ENGINEER in determining its DBE commitment level, the CITY has estimated 5.7% DBE availability on this Project.

15.16.3. The Department and the CITY are collecting information on both actual payments made to Subconsultants and DBE commitment amounts. ENGINEER shall comply with all reporting requirements set forth in Chapter 14 of the Department's LAP Manual. DBE Information will be collected through the web-based Equal Opportunity Compliance (EOC) System.

Anticipated DBE participation, also known as "commitments" is to be entered into the EOC by the ENGINEER upon execution of this Agreement. ENGINEER shall input the name of the DBE company, specialty code/NAICS code identifying work to be performed, the total contract amount, and such other information as requested by the EOC System. Thereafter, the ENGINEER shall update such information anytime there is a change in DBE firms, anticipated DBE participation, and anytime there is an amendment to this contract that affects anticipated DBE participation, including an amendment to the overall amount of work being performed hereunder.

On a monthly basis during the term of this Agreement, the ENGINEER shall input and report in the EOC System, the actual payments, DBE/minority status, and the work type of all Subconsultants and major suppliers on this Project. The reporting shall include all DBE and all non-DBE Subconsultants, subcontractors, and suppliers. If no payment is made the ENGINEER shall report a zero dollar payment. In addition, if ENGINEER is a certified DBE, it must report the portion of the contract which will be performed directly by it with its own workforces.

The ENGINEER shall also create and maintain the following records to monitor DBE utilization efforts: 1) the procedures adopted by ENGINEER to comply with the contractual DBE requirements, 2) the number of contracts awarded to DBEs, 3) the dollar value of the contracts awarded to DBEs, 4) the percentage of the dollar value of contracts awarded to DBEs as a percentage of the dollar value of the Agreement, 5) a description of the general categories of contracts awarded to DBEs, and 6) the specific efforts employed by the ENGINEER to identify and award contracts to DBEs. The ENGINEER shall provide these records to the CITY, Department and the Federal Highway Administration upon request.

15.16.4. Prior to their performing any work pursuant to this Agreement, the CITY shall have the right to review and approve the use of all subcontractors, including any and all DBE Subconsultants. ENGINEER shall not terminate a DBE subcontractor and perform the work with its own forces or an affiliate's without the prior written approval of the CITY. If a DBE subcontractor is terminated or fails to complete the work for any reason, ENGINEER shall make good faith efforts to find another DBE subcontractor to substitute for the original subcontractor.

15.17. Florida Department of Transportation Grant Requirements

15.17.1. This Project is funded in whole or in part by the financial participation of the Department through a Local Agency Program (LAP) Agreement. The Agreement between the CITY, also referred to herein as "Agency," and ENGINEER shall comply with and conform to all of the applicable requirements of the LAP Agreement including, but not limited to, the following provisions of this Section 15.17. In addition, all work shall be performed in accordance with the Department's "Local Agency Program Manual", including to the extent

applicable, any provisions contained therein related to reporting, patent rights, copyrights, and rights to data. In the performance of work under this Agreement, ENGINEER shall also comply with the provisions of Exhibit IV required by the Department entitled “Terms for Federal Aid Contracts, attached hereto and incorporated herein by this reference.”

15.17.2. Records of costs incurred and other records related to the performance of work hereunder shall be maintained and made available by ENGINEER and its subcontractors at all times during the term of the Agreement and, unless a different period is required by law, for five (5) years after final payment is made. Copies shall be furnished upon request by the CITY. Records of costs incurred and other records related to performance include but are not limited to any books, documents, papers, financial, accounting and project records and supporting documents of ENGINEER and its subcontractors, and all other records that Department considers necessary for an audit. If any litigation, claim or audit is started before the expiration of the five (5) year or other applicable period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. Access to all records for the purposes of making audit, examination, inspections, excerpts and transcriptions shall be given by ENGINEER to the CITY, U.S. Department of Transportation, the Department, the Comptroller General of the United States, the Inspectors General, the State Comptroller, the State Chief Financial Officer, the State Office of the Auditor General, any other state and federal department or agency with jurisdiction, and their representatives. This right also includes timely and reasonable access to the ENGINEER’s personnel for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.

15.17.3. The ENGINEER shall permit the Department authorized representatives and authorized agents of the FHWA to inspect all work, workmanship, materials, payrolls, and records and to audit the books, records, and accounts pertaining to the financing and development of the Project. CITY and ENGINEER shall comply with the obligations contained in Section 20.055(5) of the Florida Statutes to cooperate with the State of Florida inspector general in any investigation, audit, inspection, review or hearing.

15.17.4. If travel reimbursement is authorized by the CITY in the Agreement, the ENGINEER must submit bills for any travel expenses in accordance with §112.061 of the Florida Statutes and Chapter 3 – Travel of the Department Disbursement Operations Manual.

15.17.5. If the Department terminates or suspends the LAP Agreement, the CITY shall have the right to terminate or suspend this Agreement either for cause or for the CITY’s convenience, as applicable.

15.17.6. This Agreement is subject to the approval of the Department. The Department has the right to review the qualifications of any consultant or contractor of the CITY and to approve or disapprove the employment of same.

15.17.7. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (Applicable to all Federal-Aid Contracts – 49 CFR 29): The Agreement may not be awarded to a party listed on the government-wide Excluded Parties List System in the System for Award

Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989., p. 235). As part of the CITY's agreement(s) with the Department for state and federal funding the CITY, which is referred to herein below as the "Agency", was (or will be) required to make the following certification to the Department:

By signing and submitting this Agreement, the Agency is providing the certification set out below:

The inability of the Agency to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify the Agency from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available, the Department may terminate this transaction for cause of default.

The Agency shall provide immediate written notice to the Department if any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntary excluded," as used in this clause, have the meanings set out in the Definitions and Covered Sections of Rules Implementing Executive Order 12549. Contact the Department for assistance in obtaining a copy of those regulations.

The Agency further agrees, by submitting this Agreement, that it shall not knowingly enter into any contracts with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.

The Agency further agrees by submitting this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all contracts and in all solicitations for contracts.

The Agency may rely upon a certification of a prospective subcontractor that the person is not debarred, suspended, ineligible or voluntarily excluded from

the covered transaction, unless it knows that the certification is erroneous. The Agency may decide the method and frequency by which it determines the eligibility of its subcontractors. The Agency may, but is not required to, check the nonprocurement portion of the “Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs” (Nonprocurement List) which is compiled by the General Services Administration.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the Agency is not required to exceed that which is normally processed by a prudent person in the ordinary course of business dealings.

Unless authorized by the Department, if the Agency knowingly enters into a contract with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available, the Department may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion:

The Agency certifies by execution of this agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the Agency is unable to certify any of the statements in this certification, an explanation shall be attached to this proposal.

The ENGINEER certifies, by execution of this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. ENGINEER shall execute and return with the Agreement a copy of Exhibit V, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Federal Aid Contracts. If at any time the ENGINEER or a subcontractor learns that the certification it provided to the CITY was erroneous when submitted or has become erroneous by reason of changed circumstances, the ENGINEER or subcontractor shall provide immediate written notice to the CITY.

In addition, the ENGINEER certifies, by execution of this Agreement, that it and its Subconsultants will comply with all requirements imposed by applicable federal, state, local laws and regulations, including the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions” in 49 CFR Part 29, when applicable. Eligibility can be verified at: For Federal – <https://www.sam.gov> and for DMS link for State and federally disqualified vendors – http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convi

[cted_suspended_discriminatory_complaints_vendor_lists](#) .

15.17.8. In connection with the carrying out of any Project, the ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, sex, age, disability, family or religious status. The ENGINEER will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, national origin, sex, age, disability, family or religious status. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training. Failure by the ENGINEER to carry out these requirements is a material breach of this Agreement which may result in the termination of this Agreement or such other remedy as the CITY deems appropriate. The ENGINEER shall insert a similar provision to the foregoing in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

15.17.9. The ENGINEER shall comply with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations. Engineer hereby understands and agrees that, in addition to the CITY and any other party having enforcement rights under this Agreement or by law, the United States shall also have the right to enforce such laws and regulations. Title VI of the Civil Rights Act, 42 U.S.C. 2000, provides in Section 601 that, "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." ENGINEER, for itself, its delegates, successors-in-interest, its assigns, and its subcontractors, and as a part of the consideration hereof, does hereby covenant and agree that:

(i) it shall comply with Section 601 of Title VI of the Civil Rights Act, 42 U.S.C. 2000, set forth above; and

(ii) it shall not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in the performance of this Agreement and shall carry out the applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. The failure by the ENGINEER to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the CITY deems appropriate as set forth below;

(iii) in the furnishing of Services to the CITY hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to this Agreement on the grounds of such person's race, color, national origin, sex, age disability, family or religious status;

(iv) it shall insure, and include such assurance in solicitations, that respondents for subcontracts for work and material solicited by ENGINEER will not be discriminated against on the grounds of race, color, national origin, sex, age, disability, family or religious status in consideration for an award of a contract and that disadvantaged business enterprises

(DBEs) shall have full opportunity to submit responses to such solicitations. This nondiscrimination is in agreement with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-7 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation. Disadvantaged business enterprises are defined in 49 CFR Part 26; and

(v) it will act in accordance with Section 504 of the Rehabilitation Act and Title 49, Code of Federal Regulations, Department of Transportation, Part 27 – Nondiscrimination on the basis of disability in programs or activities receiving federal financial assistance, and under the ADA whether or not there is federal financial assistance and understands and agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the ADA and Section 504, the Regulations, and this Agreement.

In the event of a breach of any of the nondiscrimination and other covenants described in this paragraph, such breach shall constitute a breach of this Agreement and the CITY shall have the right to immediately terminate this Agreement in whole or in part, without liability, or seek such other remedy(ies) as the CITY deems appropriate, including but not limited to suspension or debarment from future CITY contracts. ENGINEER shall comply with the requirements of Exhibit IV attached hereto and incorporated herein by this reference and shall require that all of its subcontractors agree and comply with the requirements of this paragraph and Exhibit IV.

15.17.10. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. ENGINEER shall immediately notify CITY in writing and cease all work (or cause the applicable subcontractor to cease all work) in the event that it or a subcontractor is placed on the convicted vendor list.

15.17.11. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity and may not transact business with any public entity. In addition, an entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or has further been determined by the Department of Transportation to be a non-responsible contractor may not submit a bid (or other response to a solicitation) or perform work for the construction or repair of a public building or public work on a contract with the CITY. ENGINEER shall immediately notify CITY in writing and cease all work (or cause the

applicable subcontractor to cease all work) in the event that it or a subcontractor is placed on the discriminatory vendor list or had its Certificate of Qualification suspended, revoked, denied or has been determined by the Department of Transportation to be a non-responsible contractor or consultant.

15.17.12. No member, officer, or employee of the Agency or of the locality during his tenure or for two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. The ENGINEER shall insert the above sentence in each of its subcontracts.

15.17.13. No member of or delegate to the Congress of the United States will be admitted to any share or part of this Agreement or to any benefit arising therefrom. As part of the CITY's agreement(s) with the Department for state and federal funding the CITY was (or will be) required to make the following certification to the Department:

The CITY agrees that no Federally appropriated funds have been paid, or will be paid by or on behalf of the CITY, to any person for influencing or attempting to influence any officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federally appropriated funds have been paid by the CITY to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

No funds received pursuant to this contract may be expended for lobbying the Legislature or a State agency.

As set forth and required by federal regulations including but not limited to 49 CFR Part 20 and Appendix A thereto, by execution of this Agreement ENGINEER makes the foregoing certifications and agrees to make such disclosures related to lobbying to the same extent as the CITY's obligations as stated above, and shall require its Subconsultants to make the same certifications and disclosures. ENGINEER shall execute and return with the Agreement a copy of Exhibit VI, Certification for Disclosure of Lobbying Activities on Federal-Aid Contracts and if necessary a copy of the Disclosure of Lobbying Activities as included under Exhibit VI.

15.17.14. ENGINEER shall comply with City, State, and federal laws, regulations, and rules regarding conflict of interest. ENGINEER shall execute and return with this Agreement an executed copy of Exhibit VII, FDOT Form #375-30-50 "Conflict of Interest Certification for Consultant/Contractor".

15.17.15. ENGINEER and its subcontractors shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), including Environmental Protection Agency regulations ([40 CFR part 15](#)). ENGINEER and its subcontractors shall incorporate these requirements into all subcontracts in excess of one hundred thousand dollars (\$100,000.00). ENGINEER and its subcontractors shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the State of Florida energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

15.17.16. The ENGINEER shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to verify the employment eligibility of all new employees hired by the ENGINEER during the term of the Agreement. In addition, ENGINEER shall require any subcontractors performing work or providing services pursuant to the Agreement to verify the employment eligibility of all new employees hired by the subcontractor during the term of the Agreement. As set forth in the terms governing use of the system, E-Verify participation posters which are available on the U.S. Citizenship and Immigration Services website shall be posted at the ENGINEER's and its subcontractors' and Subconsultants' places of hiring, or as otherwise required by the program, to inform their current and prospective employees of their legal rights and protections. Prior to commencing any work, ENGINEER shall provide the CITY's Project Manager with a copy of the "Edit Company Profile" screen indicating enrollment in the E-Verify Program for itself and each subcontractor performing work under this Agreement.

15.17.17. Resource Conservation and Recovery Act of 1976. ENGINEER and its subconsultants in performing work pursuant to this Agreement shall comply with Section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962) and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which requires the purchase of recycled products by States or political subdivisions of States and those persons contracting with such agencies. In preparing designs and design specifications, ENGINEER and its subconsultants shall specify and require the highest percentage of recovered materials practicable (as that term is defined in 40 CFR Part 247) for those items for which guidelines have been adopted, consistent with maintaining a satisfactory level of competition. In preparing design specifications, ENGINEER and its subconsultants shall set minimum recovered materials content specifications for items for which guidelines have been adopted. For designated items above the established threshold limits (\$10,000), if any, procured by ENGINEER or its subconsultants under this Agreement, ENGINEER shall provide the CITY annually and upon final completion of the work, a report detailing the designated items procured and their percentage of recycled material used. If the scope of work of this Agreement specifies that any other products must meet a specified level of recovered materials, ENGINEER certifies that it shall use or specify in its designs at least the minimum level required by this Agreement and include any actual use in its monthly and final reports.

15.17.18. It is mutually understood and agreed that the willful falsification, distortion, or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of Federal law. Accordingly, United States Code, Title 18, Section 1020, entitled

“Highway Projects” is hereby incorporated by reference and made a part of this Agreement.

15.17.19. In addition to any other remedies provided for in this Agreement or to which the CITY may be entitled at law or in equity, in the event of a breach or violation of this Agreement by ENGINEER, ENGINEER shall be subject to debarment or suspension from consideration for the award of additional contracts from the CITY, pursuant to the provisions set forth in Chapter 7 of the City Code.

15.17.20. The ENGINEER and its Subconsultants shall comply with applicable federal and Florida public records laws and allow public access to all documents, papers, letters or other material which are made or received in conjunction with this Agreement, subject to the provisions of such laws, including but not limited to Chapter 119, *Florida Statutes*. To the extent applicable, ENGINEER shall comply with Florida public records laws, including Sections 119.0701(2) (b) 1 through 4 of the Florida Statutes. **IF ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ENGINEER’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT C/O DEPUTY CITY CLERK, RECORDS@CITYOFORLANDO.NET, TELEPHONE NUMBER (407) 246-3538, 400 S. ORANGE AVE., ORLANDO, FL 32801.**

15.17.21. The CITY shall evaluate the performance of ENGINEER and its subconsultants in accordance with the requirements of the LAP Agreement and the Department’s LAP Program (and/or as may otherwise be directed by the Department). Copies of such evaluations shall be provided to ENGINEER. Copies shall also be uploaded into the Department’s LAPIT system by the CITY as part of the project record within sixty (60) days of final payment under this Contract.

15.17.22. As required by the terms of the LAP Agreement, to the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless the CITY, the State of Florida Department of Transportation, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys’ fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the ENGINEER and persons employed or utilized by the ENGINEER in the performance of this Agreement. This indemnification shall survive the termination of the Agreement. Nothing contained in this section is intended to nor shall it constitute a waiver of the State of Florida and the CITY’s sovereign immunity.

15.17.23. ENGINEER shall execute and return an executed copy of Exhibit VIII, FDOT Form #375-040-18 “Drug-Free Workplace Program Certification” with this Agreement.

15.18 Errors and Omissions.

It is the CITY’s and FHWA’s policy that a consultant should be responsible for the additional project costs caused by their errors and omissions and acts of professional negligence. Acceptance of the work performed under this Contract does not constitute CITY approval or a

waiver of any such errors or omissions, and will not relieve the ENGINEER of the responsibility for subsequent corrections and costs of any errors and/or omissions and the clarifications of any ambiguities. In such event, in addition to any other remedies to which the CITY may be entitled under law or in equity, if requested by CITY, the ENGINEER shall make all necessary revisions or corrections resulting from errors and/or omissions on the part of ENGINEER without additional compensation. The provisions set forth above are supplemental and in addition to any other legal or equitable rights, remedies, and claims available to either party.

15.19 Non-Exclusive Contract; No Third Party Beneficiaries.

This Agreement is non-exclusive agreement between the parties. It is understood and acknowledged that the rights granted herein to the ENGINEER are non-exclusive, and the CITY shall have the right, at any time, to enter into similar agreements with other engineers, architects, landscape architects, planners, consultants, contractors, subconsultants, and so forth, to have them perform such professional services as the CITY may desire. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a claim, cause of action, lien or any other damages or any relief of any kind pursuant to the terms or provisions of this Agreement.

IN WITNESS WHEREOF, this Agreement has been fully executed on behalf of the parties hereto and by its duly authorized representatives, as of the date first written above.

City of Orlando, Florida

By: _____
David Billingsley, CPSM, C.P.M.
Chief Procurement Officer

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Orlando, Florida, only.

_____, 20____.

Michael S. O'Dowd
Assistant City Attorney
Orlando, Florida

VANASSE HANGEN BRUSTLIN, INC.

By: _____

Print Name: _____

Title: _____

STATE OF FLORIDA }

COUNTY OF _____}

PERSONALLY APPEARED before me, the undersigned authority, _____, well known to me or [] who has produced _____ as identification, and known by me to be the _____ of the corporation named above, and acknowledged before me that he/she executed the foregoing instrument on behalf of said corporation as its true act and deed, and that he/she was duly authorized to do so.

WITNESS my hand and official seal this _____ day of _____, 20

NOTARY PUBLIC
My Commission Expires:

APPENDIX I

RQS18-0002