

PREPARED BY AND RETURN TO:

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**AGREEMENT FOR CONSTRUCTION OF
GRAVITY SEWER LINE ALONG PINELOCH STREET**

THIS AGREEMENT FOR CONSTRUCTION OF GRAVITY SEWER LINE ALONG PINELOCH STREET ("**Agreement**"), made and entered into this ____ day of June, 2018 (the "**Effective Date**"), by and between the **City of Orlando, Florida**, a municipality duly enacted under the laws of the State of Florida, whose address is 400 South Orange Avenue, Orlando, Florida, 32802, "**City**", and Prestige Paving and Land Development, Inc., a Florida corporation, whose address is P.O. Box 561441, Orlando, Florida 32856, ("**Contractor**").

WHEREAS, to provide sanitary sewer service for the Southside Shoppes, a private development located on the south side of Pineloch Street between Orange Avenue and Center Avenue, Contractor is installing an eight-inch ("8") DIP force main located in the eastbound lane of Pineloch Street between Center Avenue and Osceola Avenue and restoring the Pineloch Street right-of-way; and

WHEREAS, in conjunction with the construction of the development's forcemain, City has requested that Contractor install a ten-inch ("10") PVC gravity sewer line and manholes adjacent to the force main, also within the eastbound lane of Pineloch Street from Center Avenue to Osceola Avenue, at the City's cost, for the City's ownership, operation and maintenance (the "Work"), as shown in the preliminary drawings shown in **Exhibit "A,"** attached hereto; and

WHEREAS, the estimated cost of the Work is approximately Two-Hundred Eighty-Nine Thousand, Nine-Hundred-Eighty Dollars (\$289,980.00), as shown in **Exhibit "B"** attached hereto and incorporated herein; and

WHEREAS, Contractor has agreed to construct the Work under the terms of this Agreement, which constitutes a public purpose by facilitating sewer service to existing residents and new development in the area south of Pineloch Street.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is acknowledged by the parties hereto, the City and Contractor agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated into this substantive body of this Agreement as if set forth therein.

2. Design. City is preparing final construction plans and specifications for the Work, "Plans," in compliance with all governmental requirements, including, without limitation, all applicable municipal, county, state and federal laws, ordinances, codes, statutes, rules and regulations. Contractor and the City have reviewed the preliminary Plans, which are attached hereto as **Exhibit "A"** and made a part hereof by reference.

3. Construction. Contractor is responsible for the construction of the Work. Contractor will comply with all applicable laws, rules, regulations and reasonable engineering/construction standards in constructing the Work and will construct the Work in substantial conformity with the Plans. The City will inspect the Work for acceptance.

4. Proposal. Prior to awarding the construction contract for the Work, "Contract," the Contractor shall provide the City with a final proposal including the schedule of values for the Work, itemized using unit and lump sum prices as appropriate for the pay items, attached hereto as **Exhibit "B"** and made a part hereof by reference. The City will review the final proposal and notify the Contractor in writing within ten (10) calendar days of the City's receipt, whether or not the City finds it acceptable. In the event that the City notifies the Contractor within ten (10) calendar days of the City's receipt that the Proposal is not acceptable, this Agreement will automatically terminate and the parties will be relieved of any further liability hereunder.

5. City Payment(s). In the event the City approves the final proposal, then within thirty (30) calendar days after the Contractor's Notice to Proceed, the City will pay to Contractor an amount equal to twenty-five percent (25%) of the amount of the final proposal. City will pay the remaining balance in twenty-five percent (25%) increments as the work reaches the same stage of completion as the aggregated payments. The final twenty-five percent (25%) payment will be made after City internal video inspection and acceptance of the Work.

6. Change Orders. The Contract shall be tracked according to the schedule of values and paid as the Work is completed. Contractor shall not construct any changes to the Work which will increase the City's cost above the final Proposal without the express written approval of the City representative, which approval will not be unreasonably withheld. If a change order is approved, City will pay the Contractor, the additional costs within thirty (30) calendar days after the City's approval of the change order and completion of the additional Work.

7. Insurance During Construction. Contractor shall at all times during the construction of the Work, possess: 1) worker's compensation insurance in the amount of the Florida Statutory Limit; 2) automobile liability insurance of at least \$1,000,000; and 3)

general liability insurance in the amount of at least \$2,000,000. All liability insurance shall be maintained throughout the course of construction of the Work, and for a period of one year after final acceptance of the Work, in order to protect the City from any covered liability, claims, damages, losses or expenses arising from anything connected with construction of the Work. The City shall be listed as an additional insured on the automobile and general liability policies.

8. Payment & Performance Bonds. The Contractor shall obtain performance and payment bonds prior to commencement of construction of the Work in a form acceptable to the City, with the penal amount of each bond equal to the contract amount for the Work. The Surety must be authorized to issue bonds in Florida, must be listed in the most recently issued United States Department of the Treasury's "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies", as published in the Federal Register and is subject to the final approval of the City. The City shall be listed as an obligee on each bond.

9. Non-Conforming Work. In the event any part of the Work is discovered, whether by the City Representative or the Contractor, to be defective or otherwise non-conforming to the requirements of the permitted construction plans which have been permitted by the City, the City or Contractor will promptly notify the other party of such defect or non-compliance. Contractor will immediately remove and replace the defective work or otherwise remedy the non-conforming work to the satisfaction of the City.

10. Certification. Upon completion of the Work at appropriate stages, City Surveyors will perform As-Built Survey work with the end result of producing final As-Built Survey Drawings. City inspectors will conduct a final inspection and perform an internal pipe inspection video. If the City determines that all work has been completed in substantial conformance with the permitted construction plans and all other applicable construction standards, permitting and engineering requirements, the City shall notify Contractor in writing of final completion acceptance. City may also notify Contractor of any deficiencies in the Work, which must be remedied prior to the City's final completion acceptance. Upon receipt of the City's written notification of acceptance of the Work, Contractor shall submit a final completion certification of the Work, as well as any necessary warranties, waivers and releases from subcontractors and suppliers, test certifications, operation and maintenance manuals and documentation for approval of the construction by governmental agencies having jurisdiction other than the City, as well as any other reasonable supporting documents required by the City. Upon the City's review and approval of the above items, City agrees to assume perpetual repair and maintenance responsibilities of the Work after the one year warranty expiration. The Contractor is responsible for the Work until the City's final completion acceptance as described herein. Upon the request by the City, Contractor agrees to execute a bill of sale transferring the infrastructure constituting the Work, to the City.

11. Independent Contractors. The Contractor, its agents, or subcontractors, shall perform all activities that are outlined in this Agreement as independent entities and not as agents, employees or representatives of the City or its employees or representatives.

12. Default. Failure by any party to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them respectively, shall constitute a default under this Agreement, and (i) if such default is not cured or remedied within sixty (60) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default, or (ii) if such default cannot be reasonably cured or remedied within such sixty (60) day period, the defaulting party fails to commence to cure or remedy the default within such sixty (60) day period and thereafter fails to diligently and expeditiously pursue such cure or remedy, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity, including without limitation, the right to terminate this Agreement. Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein.

13. Termination. This Agreement may be terminated by mutual consent of the Parties or upon default or as otherwise provided herein. Upon termination, the Parties will be relieved of any further obligation or liability hereunder except as expressly provided herein.

14. Litigation and Attorneys' Fees. In the event any party to this Agreement should bring suit to enforce or interpret any provision hereof, the predominantly prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.

15. Binding Effect. The terms and conditions of this Agreement are binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

16. No Waiver of Regulatory Authority. Contractor acknowledges that the City is the entity responsible for issuing building permits and certain other types of permits which will be required in connection with this Agreement and development of the Southside Shoppes, and further acknowledges that nothing in this Agreement constitutes or is intended to operate as a waiver of such regulatory authority or the application of any applicable laws, rules or regulations.

17. Amendment. This Agreement may not be terminated, modified or amended except by an instrument in writing signed by each of the parties.

18. Effective Date. This Agreement shall become effective on the date of full and complete execution by all parties hereto.

CONTRACTOR:

Prestige Paving and Land Development, Inc.,
a Florida corporation

By: _____

Name: _____

Title: _____

STATE OF FLORIDA
COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned authority,
_____, as _____, of
_____, a _____ limited liability company. He/she ☐ is
personally known to me or ☐ who has produced _____ as
identification.

WITNESS my hand and official seal this _____ day of _____, 2018.

Notary Public

Print Name: _____

My Commission expires: _____

CITY OF ORLANDO

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.

Alison Brackins, Assistant City Attorney

_____, 2018

EXHIBIT "A"

PRELIMINARY PLAN AND PROFILE SHEETS

EXHIBIT "B"

PRESTIGE FINAL PROPOSAL TO CITY