

**AGREEMENT BETWEEN CITY OF DELTONA AND
MCMAHAN CONSTRUCTION CO., INC.
PER BID NO. 26022**

THIS AGREEMENT is made and entered into this ____ day of _____, 20__ by and between the City of Deltona, a Florida municipal corporation, with its principal place of business located at 2345 Providence Boulevard, Deltona, Florida 32725 (the “City”) and MCMAHAN CONSTRUCTION CO., INC., a Florida profit corporation, with its principal place of business located at 2864 W. Main Street, Leesburg, Florida 34748, (the “Contractor”) (collectively “Parties”).

WITNESSETH

WHEREAS, the City desires to retain Contractor to perform services in connection with its Replacement of Rotor and Components at the Deltona Lakes Water Reclamation Facility (WRF), as it relates to ITB No. 26022 (the “Services”); and

WHEREAS, Contractor is competent and has sufficient manpower, training, and technical expertise to perform the services contemplated by this Agreement in a timely and professional manner consistent with the standards of the industry in which Contractor operates; and

WHEREAS, CONTRACTOR agrees to provide such goods and services as more particularly described in this Agreement, as well as in any bid or quotation documents issued in connection with this project.

WHEREAS, the City Commission approved award of this bid on _____, 202__.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, premises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

- 1. Recitals.** The foregoing recitals are true and correct, constitute a material inducement to the parties to enter into this Agreement, and are hereby ratified and made a part of this Agreement.
- 2. Scope of Services.** The City hereby retains Contractor to furnish services as described in the Scope of Work, which is attached hereto as **Exhibit "A"** and incorporated herein by reference. Any conflict between the terms and conditions in the body of this Agreement

and the terms and conditions set forth in **Exhibit "A"** will be resolved in favor of the body of this Agreement.

Contractor must provide all permits, labor, materials, equipment, and supervision necessary for the completion of the Scope of Services, unless specifically excluded.

Contractor must also comply with, and abide by, all requirements as contained in any invitation to bid (ITB), request for proposals (RFP), request for qualifications (RFQ), bid specifications, engineering plans, shop drawings, material lists, or other similar documents issued for this project by the City, together with any addenda, hereinafter the "Bid Documents, as applicable." The Bid Documents, as applicable, are hereby incorporated into this Agreement by reference and are declared to be material part of this Agreement.

Contractor shall be responsible for obtaining all required federal, state or local permits required to complete the scope of work under this agreement. All work completed under this Agreement shall at all times comply with all applicable federal, state and local statutes, codes, regulations and ordinances.

Contractor shall be responsible for the quality of work performed. Contractor shall, without additional compensation, correct or revise any errors or deficiencies in his services.

Contractor agrees to provide a one year maintenance period to correct any defective work that may be found within the one year period from the time of completion.

- 3. Use of Sub-Contractors.** In the event Contractor, during the course of the work under this Agreement, requires the services of any Sub-Contractor or other professional associates in connection with service covered by this Agreement, Contractor must secure the prior written approval of the City. If Sub-Contractors or other professional associates are required in connection with the services covered by this Agreement, Contractor shall remain fully and solely responsible for the services of and monies owed to Sub-Contractors or other professional associates.
- 4. Designation of City Representative.** It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement will arise. The City, upon request by Contractor, shall designate in writing and shall advise Contractor in writing of one (1) or more City employees to whom all communications pertaining to the day-to-day conduct of the Agreement shall be addressed. The designated representative shall have the

authority to transmit instructions, receive information and interpret and define the City's policy and decisions pertinent to the work covered by this Agreement.

5. **Term.** The Services to be rendered by the Contractor, shall commence upon issuance of a Notice to Proceed and be completed within sixty (60) calendar days. Any additional time shall be agreed upon in writing.
6. **Liquidated Damages.** City and Contractor recognize that time is of the essence of this Agreement and that City will suffer financial loss if the Work is not completed within the times specified above. The Parties also recognize the delays, expense and difficulties in proving the actual loss suffered by City if the Work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the City five hundred dollars (\$500.00) for each day that goes beyond the agreed upon completion date as stated on the Notice to Proceed. This amount represents an estimate of City's damages for loss of use and administrative costs associated with the delay.
 - 6.1 The above liquidated damage provision shall not affect either party's right to terminate this Agreement nor shall it limit any of the other remedies as provided in the Agreement. The City's exercise of its right to terminate this Agreement shall not release the Contractor from its obligation to pay liquidated damages in the amount set forth herein. Such assessments shall be immediately due and payable to the City or, at the City's option, may be deducted from payments that may be due and owing to the Contractor.
 - 6.2 Except for delays due to the gross negligence of the City or active interference by the City, Contractor's sole and exclusive remedy for delays shall be an increase to the Time for completion. Contractor shall not be entitled to an increase in the Compensation or to payment of any other additional monies from City for costs incurred as a result of such delay. City's exercise of its rights under this Agreement shall in no way be considered active interference.
7. **Compensation.** The City agrees to compensate Contractor for work performed, completed and accepted by the City's representative for services provided for this project at a total cost not to exceed **Three hundred and fifteen thousand dollars and 00/100 (\$315,000.00)**. Fees for any additional work needed will be agreed upon in writing prior to any service being completed.

7.1 Payment Application. To be deemed proper, all invoices shall comply with the requirements set forth in this Contract and shall be submitted on the form and pursuant to instructions prescribed by the City. Payment for any and all invoices that may arise as a result of a purchase order issued pursuant to this specification shall minimally meet the following conditions to be considered as a valid payment request:

- a. A timely submission of properly certified invoices, in strict accordance with the prices and delivery elements as stipulated in the purchase order document, submitted to the Finance Department at the address stipulated on the Purchase Order.
- b. All invoices submitted shall consist of an original and one (1) copy; clearly reference the purchase order number; provide a sufficient salient description to identify goods or service for which payment is requested; contain date of delivery; original or legible copy of signed delivery receipt including both manual signature and printed name of a designated City employee or authorized Agent; and be clearly marked as “partial”, “complete” or “final” invoice. The City will accept partial deliveries.
- c. The invoice shall contain the Proposer’s Federal Employer Identification Number.

7.2 Retainage. Retainage shall be withheld in accordance with Florida Statute §218.735. Contractor may submit a payment request for all retainages withheld in accordance with §218.735(7)(e); after submission of the final invoice.

7.3 Contractor’s Obligations to Subcontractors and Suppliers. Contractor shall pay its subcontractors and suppliers in accordance with Florida Statute §218.735(6). Contractor shall require its subcontractors to pay all of the subcontractor’s subcontractors in accordance with §218.735(6).

7.4 Payment by City. The City’s terms are “Net 30 Days” after acceptance of goods or services and receipt of an acceptable invoice as described herein. Based upon the approved invoice, the City shall make payment by ACH to Contractor in the amount approved. The payment of any invoice for payment by the City does not constitute approval or acceptance of that part of the Project to which such payment relates or relieve the Contractor of any of its obligations hereunder with respect hereto.

7.5 City’s Right to Withhold Payment. Any provisions hereof to the contrary notwithstanding, the City shall not be obligated to make current payment to the Contractor hereunder if any one of the following conditions exists:

- a. Contractor fails to diligently prosecute the work in an efficient, timely, and workmanlike manner and in strict accordance with the provisions of the Contract Documents; or
- b. Contractor fails to use an adequate number of qualified personnel and sufficient equipment to complete the Project without undue delay;
- c. Contractor fails to make prompt payments to its Subcontractors, suppliers, materialmen, or laborers; or
- d. Contractor is otherwise in default of any of its obligations hereunder or otherwise is in default under any of its contractual requirements; or
- e. Any discrepancies between the City's records and the Contractor's submittals must be rectified, to City's satisfaction, by the Contractor before the City makes payment on those items. The Contractor shall only issue invoices for services rendered. Pursuant to Chapter 218, Florida Statutes, the City will pay interest not to exceed one percent (1%) per month on all undisputed invoices not paid within thirty (30) days after receipt and acceptance of the service, and receipt by the City of a properly completed invoice, whichever is later. Invoices for payments hereunder shall be submitted to the Project Manager.

7.6 Final Payment. Contractor shall notify the City and the Project Manager that the Project is ready for Final Inspection upon completion of all items on the final list. The City will then schedule the Final Inspection, in coordination with the Contractor. The Final Inspection shall be conducted by the City, within ten (10) days of the Contractor's notification to the City. Following the Final Inspection, the City shall provide the Contractor a list of any additional items for corrective action and conduct an additional inspection, if necessary, to ensure that the Work has been completed.

7.7 City's Reservation of Rights Following Final Payment. The City reserves the right, if it discovers an error in the partial or final quantity estimates used for payments, or if it discovers that the Contractor performed defective Work or used defective materials, after the Final Payment has been made, to claim and recover from the Contractor or his surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the Work and materials.

- 8. Bond.** If a surety bond has been required by the Bid Documents for Contractor's faithful performance and payment, and if at any time the surety is no longer acceptable to the City, Contractor must, at its expense, within five (5) days after the receipt of notice from the City to do so, furnish an additional bond or bonds in such form and with such Surety or Sureties as are satisfactory to the City. The City will not make any further payment to Contractor, nor will any further payment be deemed to be due to Contractor, until such new or additional security for the faithful performance of the work is furnished in a manner and form satisfactory to the City.

9. Independent Contractor. During the term of this Agreement, Contractor shall be an independent contractor and not an employee of the City. Contractor is not an agent of, or authorized to transact business, enter into agreements, or otherwise make commitments on behalf of the City, unless expressly authorized in writing by the City Manager or his designee. Contractor shall perform the Services at the request of the City Manager of the City or his designee. Nothing set forth in this Agreement shall be construed to create the relationship of employer and employee or principal and agent between the City and Contractor. Unless expressly provided for otherwise in this Agreement, Contractor shall not act or attempt to act or represent itself, directly or indirectly or by implication, as an employee of the City or in any manner assume or create, or attempt to assume or create any obligation on behalf of or in the name of the City. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits of The City, nor any rights generally afforded City employees. Contractor further understands that Florida Worker's Compensation benefits available to employees of the City are not available to Contractor or to any employee or agent of the Contractor. Contractor shall be responsible for complying with Florida's Worker's Compensation laws. All employees and subcontractors of the Contractor shall be considered to be, at all times, the sole employees or contractors of the Contractor, under its sole direction and not an employee, contractor or agent of the City. Contractor is responsible for the payment of all required payroll taxes, whether federal, state, or local in nature, including, but not limited to income taxes, Social Security taxes, Federal Unemployment Compensation taxes, and any other fees, charges, licenses, or payments required by law.

10. City's Right to Retain Other Contractors. Nothing herein shall be deemed to preclude the City from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by the Contractor or from independently developing or acquiring materials or programs that are similar to or competitive with, the services provided under this Agreement. Contractor's Obligations Contractor shall retain all records pertaining to the Project for a period of three years from the date of the City's final acceptance of the Project. Upon request, Contractor shall make all such records available to the City or its representative. Records include all books of account, supporting documents, and papers that the City deems necessary to ensure compliance with the Contract.

10. Contractor Warranties. Contractor represents and warrants that Contractor is free to enter into the terms of this Agreement and that Contractor has no obligation to any third party or otherwise that are inconsistent with any of the provisions of this Agreement. Contractor further represents and warrants that Contractor: (i) has not and will not disclose to others any confidential business information or trade secrets belonging to the City or to any third party; (ii) will not and does not intend to use any confidential

information or trade secrets belonging to any third party in connection with the performance of Contractor's obligations to the City hereunder; and (iii) has not and will not remove any books, papers, or records belonging to the City or to any third party including, business plans, confidential customer information, or confidential or proprietary information about any the City or third party's products or services. This Section 10 shall survive termination of this Agreement.

11. Contractor Qualifications and Due Diligence. Contractor has familiarized itself with the nature and extent of the contract documents, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all examinations, investigations, explorations, tests, reports and studies which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the contract price, within the contract time and in accordance with the other terms and conditions of the contract documents and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

Contractor warrants and affirms that all firms or individuals associated with its performance under this Agreement shall be registered with the State of Florida and have obtained at least the minimum thresholds of education and professional experience required by Florida Statutes to perform the services contained herein.

12. Termination.

12.1 Termination For Convenience. This Agreement may be terminated by City for convenience upon thirty (30) calendar Days' written notice to Contractor. In the event of termination by City, Contractor shall be paid for all Deliverables completed prior to the date of such termination. In exchange for such payment, Contractor shall turn over to City all work products which has been paid for by City. Under no circumstances shall City make payment for Services that have not been performed.

12.2 Termination For Cause. This Agreement may be terminated by either party upon thirty (30) calendar days' written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of

the party initiating the termination. In the event Contractor abandons this Agreement or causes it to be terminated by City, Contractor shall indemnify City against loss pertaining to this termination. In the event that City terminates the Agreement for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under paragraph (a) of this Section and the provisions of paragraph (a) of this Section shall apply.

12.3 No Further Obligations. Unless expressly provided for otherwise in this Agreement, in the event of a termination, no Party shall have any further duty or obligation hereunder except as otherwise set forth in this Agreement or the Exhibits.

13. MISCELLANEOUS.

13.1 Notices. All notices hereunder shall be given in writing by registered or certified mail, return receipt requested, postage prepaid, addressed to the Parties at the following respective addresses, or at such other address as may be designated in writing by either Party to the other, and shall be deemed delivered for all purposes hereunder upon deposit of same into the United States mail:

If to Contractor:

McMahan Construction Co., Inc.

John Justus, Jr., Executive Vice President

123 East Indiana Avenue

DeLand, Florida 32724-4329

If to City:

City of Deltona

Dale "Doc" Dougherty, ICMA-CM

2345 Providence Blvd.

Deltona, Florida 32725

13.2 Compliance with Laws. Contractor agrees to comply with all laws, ordinances, rules, and regulations that are now or may become applicable to the Services covered by this Agreement, regardless of the applicable jurisdiction. Contractor shall make its services available to the City residents without regard to race, color, religion or sex, or as otherwise provided by law. During the term of this Agreement Contractor assures City that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that Contractor does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discriminated in any form or manner against Contractor employees or applicants for employment. Contractor understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance

- 13.3 Conflict of Interest.** The Contractor agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the City or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government. The Contractor hereby certifies that no officer, agent or employee of the City has any material interest (as defined in Section 112.312(15), Florida Statutes, as over 5%) either directly or indirectly, in the business of the Contractor to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.
- 13.4 Severability.** If any provision of this Agreement is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such violation will be inoperative and the remainder of this Agreement, as amended, will remain binding upon the Parties.
- 13.5 Successors and Assigns.** This Agreement shall be binding upon the Parties and their respective successors, heirs and assigns.
- 13.6 Headings.** The sections headings used in this Agreement are for reference and convenience only and shall not enter into the interpretation hereof.
- 13.7 Survival of Terms.** Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement which (a) the Parties have expressly agreed shall survive any such termination, or (b) remain to be performed and by their nature would be intended to be applicable following any such termination or expiration. Any liabilities which have accrued prior to termination pursuant to the insurance and/or indemnification obligations set forth below shall survive the termination of this Agreement.
- 13.8 Waiver.** No delay or omission by either Party hereto, in the exercise of any right or remedy hereunder, shall impair such right or remedy or be construed to be a waiver thereof. Any waiver of any such right or remedy by any Party must be in writing and signed by the Party against which such waiver is sought. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or any other covenant herein contained. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

Neither the City's review, approval or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and the Contractor shall be and remain liable to the City in accordance with applicable law for all damages to the City caused by the Contractor's performance of any of the services furnished under this Agreement.

13.9 Non-performance of Contractor or the City shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, hurricane, flood, terrorism, governmental acts or orders or restrictions, or other similar reason where failure to ("Force Majeure"), provided that the non-conforming Party gives prompt notice of such conditions to the other Party and makes all reasonable efforts to perform.

13.10 Governing Laws. This Agreement shall be governed by and construed in accordance with, the laws of the State of Florida. The exclusive venue for any dispute arising from this Agreement shall be the Circuit Court of Volusia County, Florida. The Parties voluntarily waive any right to trial by jury in the event of litigation between the Parties, which in any way arises out of this Agreement or the Services.

13.11 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all previous written, and all previous or contemporaneous oral, negotiations, understandings, arrangements, and agreements. Unless expressly provided for otherwise in this Agreement, this Agreement may be amended only by a written amendment signed by both Parties hereto.

13.12 Indemnification. To the extent permitted by law, Contractor agrees to indemnify, defend, and hold harmless the City and its directors, officers and employees from and against any and all liability, suits, actions, damages, costs, losses and expenses, including attorneys' fees, demands and claims for personal injury, bodily injury, sickness, diseases or death or damage or destruction of tangible property or loss of use resulting therefrom, arising out of any errors, omissions, misconduct or negligent acts of Contractor, its respective officials, agents, employees or subcontractors in the Contractor's performance of Services pursuant to this Agreement. Nothing in this Agreement shall be deemed or treated as a waiver by the City of any immunity to which it is entitled by law, including but not limited to the City's sovereign immunity as set forth in Section 768.28, Florida Statutes.

13.13 No Contingent Fees. The Contractor warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm any fee,

commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

13.14 Access to Records and Audit Clause. Contractor agrees to permit the City to examine all records which are, in any way, related to the Services provided under this Agreement, and grants to the City the right to audit any books, documents and papers of Contractor that were generated during the course of the administration of this Agreement. Contractor shall maintain the records, books, documents and papers associated with this Agreement in accordance with the “Public Records Act.”

13.15 State Required Affidavits. By entering into this Agreement, the Contractor agrees to review and comply with the following state affidavit requirements:

- a. **Public Entity Crimes Affidavit.** Contractor shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
- b. **Scrutinized Companies.** Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the Contractor is found to have submitted a false certification; or if the Contractor is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement. If this Agreement is for more than one million dollars, the Contractor certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the Contractor is found to have submitted a false certification; or if the Contractor is placed on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the City requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless

each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.

- d. **Noncoercive Conduct Affidavit.** Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By entering into this Agreement, the Contractor acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.
- e. **Prohibition on Contracting with Entities of Foreign Concern.** Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern. By entering into this Agreement, the Contractor acknowledges that it has read Section 287.138, Florida Statutes, and complies with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

14. Insurance. These are mandatory insurance requirements, each requirement listed below must be fulfilled. All policies, endorsements, certificates and/or binders shall be subject to approval by the City's Risk Management as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by a duly authorized representative of the City. A lapse in any required insurance coverage during this Agreement shall be considered a material breach. Further it is understood and agreed by

Contractor that nothing in this provision shall waive or otherwise limit the right of the City to modify INSURANCE REQUIREMENTS to meet the demands of special or unique circumstances. Accordingly, the City reserves the right to modify the types and limits of insurance to meet the demands of special or unique circumstances.

The insurance obligations under this Agreement shall be all the insurance coverage and/or limits carried by or available to the Contractor or the minimum insurance requirements and/or limits shown in this Agreement, whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover obligations of the Contractor under this Agreement.

Throughout the term of this agreement and for all applicable statutes of limitation periods, Contractor agrees to have and maintain at its own sole expense, in full force and effect the insurance policies set forth in this article. All policies must contain an endorsement requiring a minimum of thirty (30) days written notice from the insurance company to the City prior to cancellation or any change in coverage, scope, or amount of any such policy or ten-day notice for non-payment of premium.

CONTRACTOR EXPRESSLY AFFIRMS THAT IT HAS HAD THE OPPORTUNITY TO RECOVER THE COSTS OF THE INSURANCE REQUIRED IN ITS CONTRACT PRICE.

Contractor shall provide the City of Deltona with a certificate of insurance naming the City of Deltona, its employees, directors, officers, agents, independent contractors, successor or assigns, and other authorized representatives as additional insured, except on the Workers' Compensation/Employer's Liability and Professional Liability policies, as applicable, with the following terms, conditions, limits and other related criteria:

a. **Commercial General Liability:** \$5,000,000 each Occurrence Limit, \$5,000,000 General Aggregate shall include **but shall not be limited to:** bodily injury, property damage, personal injury, contractual liability, completed operations, products liability, and independent contractors' coverage. The Commercial General Liability policy shall be endorsed with the **ISO CG2010 Additional Insured** endorsement (or similar endorsement or policy coverage form with coverage at least as broad as the ISO CG 2010).

b. Workers' Compensation: FL Statutory Limits. **Employers Liability Limits:** \$1,000,000 Bodily Injury by Accident per employee; \$1,000,000 Bodily Injury by Disease per employee; \$1,000,000 Bodily Injury by Disease policy limit.

If Contractor's worker's compensation program is part of an employee-leasing or co-employment arrangement where certain Statutory employees may be excluded from coverage, Contractor specifically agrees to indemnify, hold harmless, defend against and pay or reimburse the City for losses the City or its insurers may be obligated to pay to any natural person who is denied workers compensation benefits or employers liability coverage that arise out of or result from Contractor's employee-leasing or co-employment arrangement.

It is specifically agreed that a current Florida Workers Compensation Exemption certificate shall be accepted for _____ in lieu of Workers Compensation/Employer's Liability insurance coverage.

Contractor hereby agrees that prior to any on-site visit by any other natural person other than _____, Contractor shall provide a current Florida Workers Compensation Exemption certificate to City staff for approval by City Risk Management.

c. Commercial Automobile Liability: \$1,000,000 Combined Single Limit per occurrence for Bodily Injury and Property Damage;

Based upon Contractor's written statement and representation that no autos and/or other motor vehicles are owned to or otherwise registered by Contractor, only evidence of Hired and Non-Owned Auto Liability coverage shall be required by City at Agreement inception. In order to maintain this **conditional** risk exception, Contractor shall at each subsequent renewal of their Commercial General Liability coverage provide City with an updated written statement and representation referencing same (email acceptable), otherwise evidence of liability insurance for all vehicles (owned, hired and non-owned) with limits outlined above shall be required.

It is specifically agreed that the City of Deltona shall not be liable to the Contractor for any liability arising out of the performance of this Agreement. Contractor specifically waives any and all rights of recovery it may have against the City of Deltona, independent of any waiver of rights of recovery by any insurer.

Contractor agrees to obtain any endorsement that may be necessary to effect all waivers of subrogation, but this provision applies regardless of whether or not the City

has received a waiver of subrogation endorsement or policy coverage form from the insurer.

All insurance policies shall be endorsed to provide that (a) Contractor's insurance is **primary and non-contributory** to any other insurance available to the City of Deltona with respect to claims related to this Agreement.

Self-insurance shall not be acceptable. Any policy including a self-insured retention ("SIR") in the primary layer of liability in any amount must be submitted to and approved by the City's Risk Management Department prior to risk approval.

All insurers must have an AM Best financial and size rating of A-VII or better and agree to provide the City with 30 days' advanced written notice in the event of cancellation, or modification which materially restricts coverage or terms. Contractor shall promptly notify the City of Deltona in the event of receipt of such notice from an insurer.

Contractor shall provide a copy of any policy coverage form or policy endorsement evidencing insurance coverage as outlined above at any time upon City request.

RELAXATION OR SUSPENSION OF INSURANCE REQUIREMENTS: City Risk Management may, in its sole discretion, and subject to any conditions it deems appropriate, relax, change, update, alter or temporarily suspend, in whole or in part, any insurance requirement upon written notice to Contractor.

15. Public Records

- a. Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes.
- b. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the City.
- c. Upon request from the City's custodian of public records, Contractor shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

- d. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City.
- e. Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of Contractor or keep and maintain public records required by the City to perform the service. If Contractor transfers all public records to the City upon completion of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of this Agreement, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically by Contractor shall be delivered to the City, upon request from the City's Custodian of Records, in a format that is compatible with the City's information technology systems.
- f. Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- g. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.

Section 119.0701(2)(a), Florida Statutes

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Public Records: JOYCE RAFTERY, CITY CLERK

**Mailing address: 2345 PROVIDENCE BLVD., DELTONA FL,
32725**

Telephone number: 386-878-8505

Email: JRAFTERY@DELTONAFL.GOV

16. List of Exhibits. The Parties acknowledge and agree the following Exhibits shall be attached hereto and incorporated herein:

Exhibit A – Scope of Services / Contractor's Response to ITB

Exhibit B - Notice of Award and Notice to Proceed

Exhibit C - ITB Documents, to include Project Manual and Drawings

Exhibit D – Contractor Affidavits

IN WITNESS WHEREOF, Contractor has signed and delivered this Agreement, and the City has caused this Agreement to be signed and delivered by its duly authorized officer or representative, all as of the date first set forth above.

City of Deltona

**McMahan Construction Co., Inc.
Florida Profit Corporation**

By: _____
Dale "Doc" Dougherty, ICMA-CM
City Manager

By: _____
John Justus, Jr.
Executive Vice President

Attest: _____
Joyce Raftery
City Clerk

Approved as to form and legal sufficiency for the use and reliance of the City of Deltona only

By: _____
City Attorney

E-VERIFY AFFIDAVIT

In accordance with Section 448.095, Florida Statutes, the City requires all Contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The CITY will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subContractors.

☐ **Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.**

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: _____

Print Name: _____

Title: _____

Witness #2 Print Name: _____

Entity Name: _____

ACKNOWLEDGMENT

State of Florida

County of _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20____, by _____
(name of person) as _____ (type of authority) for _____
_____ (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as
Commissioned)

Personally known to me; or

Produced identification (Type of Identification: _____)

Did take an oath; or

Did not take an oath

**AFFIDAVIT ATTESTING TO
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes.

By signing below, **I hereby affirm under penalty of perjury that:**

1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and a governmental entity, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of _____, a nongovernmental entity.
3. _____ does not use coercion for labor or services as defined in the relevant section of the law.

In the presence of:

**Under penalties of perjury, I declare that I
have read the foregoing and the facts stated
in it are true:**

Witness #1 Print Name: _____

Print Name: _____

Title: _____

Witness #2 Print Name: _____

Entity Name: _____

OATH OR AFFIRMATION

State of Florida

County of _____

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20____, by _____
(name of person) as _____ (type of authority) for _____
_____ (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as
Commissioned)

Personally known to me; or

Produced identification (Type of Identification: _____)

Did take an oath; or

Did not take an oath

**AFFIDAVIT REGARDING PROHIBITION ON CONTRACTING WITH
ENTITIES OF FOREIGN COUNTRIES OF CONCERN**

Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

This affidavit must be completed by an officer or representative of an entity submitting a bid, proposal, or reply to, or entering into, renewing, or extending, a contract with a governmental entity which would grant the entity access to an individual's personal identifying information.

1. _____ ("entity") does not meet any of the criteria in paragraphs (2)(a)-(c) of Section 287.138, F.S.

In the presence of:

**Under penalties of perjury, I declare that I have read
the foregoing and the facts stated in it are true:**

Witness #1 Print Name: _____

Print Name: _____

Witness #2 Print Name: _____

Title: _____

Entity Name: _____

OATH OR AFFIRMATION

State of Florida

County of _____

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this _
day of _____, 20____, by _____ (name of person) as _____
_____ (type of authority) for _____ (name of party on behalf of
whom instrument is executed).

Notary Public (Print, Stamp, or Type as Commissioned)

_____ Personally known to me; or

_____ Produced identification (Type of Identification: _____)

_____ Did take an oath; or

_____ Did not take an oath