

CONSTRUCTION AGREEMENT
General/Building Contractor Services
Lake Wales, Florida

This Agreement is made this ____ day of _____, 2016, by and between the City of Lake Wales, a Florida municipal corporation, with offices located at 201 Central Avenue W, Lake Wales, Florida, 33853 (the "City") and Tucker Construction & Engineering, Inc., a Florida Corporation, with offices located at 3535 Lake Alfred Rd., Winter Haven, FL 33881 (the "Contractor").

1. SCOPE OF WORK

Contractor shall perform all necessary construction services, shall procure, order and furnish all of the required materials, labor and equipment, and shall construct, install and complete all of the work called for and described in the Request for Proposal, and other descriptive data contained or referred to for the General/Building Contractor Services, RFP# 16-423, "Scope of Work", attached hereto, and in this Agreement (all hereinafter referred to as the "Contract").

2. WORK CONDITIONS

Contractor represents that it has received and has had an opportunity to examine copies of the Request for Proposals and other descriptive data and has fully acquainted itself with all the conditions relevant to the work to be performed, and the site of the work, and assumes the risk of any variances between the actual conditions relevant to the work and the same as shown or represented in the invitation to bid document; that it has made all investigations essential to a full understanding of the difficulties which may be encountered in performing the work, and bases its conclusions to execute this Contract on such investigation, independent of any other information prepared or furnished by the City or others; and Contractor will satisfactorily complete the work in accordance with the provisions of this Contract, and will assume full and complete responsibility for such conditions relevant to the work, the site of the work, and all risks in connection therewith.

3. TIME OF COMPLETION

TIME IS OF THE ESSENCE. Contractor will start the work when notified by the City and shall complete the work in accordance with the Contract.

4. TERM & PRICING

This contract shall commence for a period beginning on the date of approval of the City Commission and end on September 30, 2019 with the option to renew for Two (2), One-Year terms. The performance of the City of Lake Wales and its obligation to pay under this contract is contingent upon annual appropriation by the City Commission of Lake Wales.

5. PAYMENTS

- A. Contractor shall submit an invoice for the cost of work completed as of the date of completion of the installation and final approval of the City. All invoices shall describe, in detail, all work performed.
- B. Any payment due hereunder may be withheld by City upon evidence of default by Contractor in the performance of its obligations. Upon completion of the work and the acceptance in writing thereof by the City, the final payment due Contractor will be paid by City to Contractor within forty-five (45) days after receipt of the invoice. Any payment made hereunder, prior to acceptance of the entire project, will not be construed as evidence of acceptance of any part of the work. Contractor's acceptance of final payment will constitute a waiver of all claims.

6. CHANGES

The City may, at any time by a written change order, make changes in the work and/ or the Exhibits, omit certain work and/or require additional work to be performed by Contractor. If such changes, additions, or omissions cause an increase or decrease in the amount or character of the work performed hereunder, then an equitable adjustment of the Contract Price and to the time of completion shall be agreed upon by City and Contractor and incorporated in an amendment to this Contract. Contractor agrees to make no change, addition or omission in the work without prior written direction from the City.

7. MATERIALS, EMPLOYEES AND SUBCONTRACTORS

- A. All materials shall be new and both workmanship and materials shall be of good quality. Contractor shall, if required by City, furnish samples or other satisfactory evidence as to the kind and quality of materials as directed by the City, and all materials thereafter furnished by Contractor shall be in strict accord with such approved samples.
- B. Contractor is an independent contractor and will employ only competent, careful, orderly and fully trained persons and, shall at all times enforce strict discipline and good order among its employees and subcontractors. Upon notification by Buyer that the conduct of any person employed by Contractor or a subcontractor is unsatisfactory to Buyer, Contractor will immediately remove such person from the work.

8. PERMITS AND REGULATIONS

- A. Before commencing the performance of any work, Contractor shall procure all necessary building permits for the erection of permanent structures, all other permits and licenses as may be necessary, and before and during the progress of work under this Contract, give all notices and comply with all laws, ordinances, codes, rules and regulations of every kind and nature now or hereafter in effect promulgated by any Federal, State, County, or other Governmental authority, including the City, relating to the performance of work under this Contract.
- B. Contractor agrees to indemnify City from liability or penalty which may be imposed by reason of an asserted violation of such laws, ordinances, codes, rules or regulations. On completion of the work, Contractor will submit original Certificates of Inspection and Acceptance and of Occupancy.

9. SAFETY

Contractor agrees to protect its own employees and work and its subcontractor's work and be responsible under all circumstances for their condition until City's acceptance of the entire project and to protect adjacent property from injury arising out of such work. Contractor agrees to abide by and observe all standards and regulations of the Occupational Safety and Health Administration which are applicable to the work performed. Contractor recognizes the work may involve exposure to toxic and other hazardous substances and use of potentially dangerous equipment requiring high knowledge and skill levels to operate safely.

10. TITLE TO THE WORK

The title to all work completed or in the course of construction or installation at the site and of all materials and equipment on account of which any payment has been made by the City to Contractor, shall be in the City; provided, however, nothing in this paragraph shall be construed as affecting the City's right of accepting or rejecting the work in accordance with this Contract. Title to and risk of loss of all other materials, equipment and tools delivered to the site shall be and remain in the Contractor or its subcontractors.

11. INSPECTION AND ACCEPTANCE

A. The City shall have access to and the right to inspect all material, equipment and work in the course of construction. The City shall have the right to reject defective material, equipment and workmanship, and rejected workmanship shall be satisfactorily replaced with acceptable material and equipment.

B. Final acceptance by the City shall be made as promptly as practicable after completion and inspection of all work required hereunder. Acceptance shall be final and conclusive except as regards latent defects, fraud or gross mistakes, or with respect to City's right under the paragraph entitled "Warranty".

C. Final acceptance shall be evidenced by City's certification to the Contractor that all work has been completed, inspected and accepted by the City.

12. WARRANTY

A. Contractor warrants that the work to be performed hereunder, and the materials and equipment to be furnished shall be free from all defects in equipment, material, design or workmanship, shall meet all requirements of this Contract, and shall be suitable for the purpose intended for a period of one (1) year from the date of the City's acceptance of the work, unless a longer period is provided for by Contractor. During the warranty period, Contractor hereby:

(1) indemnifies and holds harmless the City from and against all loss or damage arising out of or in connection with any such defects, and

(2) agrees on notice from the City to Contractor promptly to remedy and cure any such defect at the sole cost and expense of Contractor as set forth below.

B. Upon discovery of any defect within the warranty period provided, the following conditions shall apply:

- (1) the City shall furnish written notice to the Contractor of the item or work involved;
- (2) within ten (10) days after receipt by the Contractor of City's notice, Contractor shall provide the following information in writing to the City:
 - a. acknowledgement of the notification given by the City of the defect;
 - b. the corrective action to be taken by the Contractor to remedy the defect;
 - c. disposition instructions regarding the defective item or work;
 - d. the date that the defective items or work shall be repaired or replaced as required or, with the advance approval of the City, a proposed price reduction to this Contract for the City's consideration.

C. In addition to other rights and remedies provided in this paragraph, all subcontractors', manufacturers' and suppliers' warranties, express or implied, applicable to any material, equipment, parts, property and services furnished under this Contract shall be enforced by the Contractor for the benefit of the City and survive acceptance and payment.

D. Whether goods are being sold, leased or rented, or services are being performed hereunder, the parties have all rights, duties and remedies provided by the Uniform Commercial Code, including inspection, rejection, revocation of acceptance and all implied and express warranties.

13. INSURANCE

A. During the term of this Agreement and at all times that Contractor performs services for City, Contractor shall, at its sole cost and expense, procure and maintain insurance policies from a licensed carrier per the requirements outlined in RFP#16-423.

B. Certificates of Insurance evidencing the required coverage and limits shall be furnished to City before any Work is commenced hereunder and shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to the City. Certificates of such insurance shall name City as Additional Insured on such policies. The certificates of insurance should also state specifically that the indemnity contained in this Agreement is covered.

C. Contractor shall require that each subcontractor provide and maintain at all times during the term of this Agreement insurance equivalent to that which is required of Contractor.

14. INDEMNIFICATION

Contractor shall defend, indemnify and save City, its elected and appointed officials, directors, employees, agents and representatives harmless from and against all liabilities, claims, costs, damages and expenses (including attorneys' fees) for personal injuries, death or property damage (including theft) to the extent arising out of or in connection with:

- (1) The negligence or intentional act or omission of Contractor, its employees, agents, representatives and subcontractors; or

(2) Contractor's breach of this Agreement; or

(3) Labor, materials, services, or supplies furnished by subcontractors or suppliers of Contractor and from all related liens, including without limitation, laborer's, materialmen's or mechanics' liens.

15. BONDS

If required by City, the Contractor shall furnish performance and payment bonds in form and amount satisfactory to City. Contractor represents that the Contract Price does not include any amount for the cost of performance or payment bonds.

16. PLANS AND SPECIFICATIONS; CITY EQUIPMENT AND DOCUMENTS

A. All plans and specifications drawn by Contractor shall be submitted to the City for written approval prior to commencement of work or procurement of materials. Copies of such plans and specifications shall be furnished to City, and all designs, specifications, improvements, inventions and all rights pertaining thereto, developed in the course of performance of this Contract, shall be promptly disclosed to, and shall become the sole and exclusive property of the City.

B. All drawings, specifications, plans and other documents, whether tracings or originals, furnished by City to Contractor shall remain the property of City, and Contractor shall make no copies or use of such drawings, specifications, plans or documents except in performance of the Work under this Contract. All such documents shall be returned to the City upon completion or termination of this Contract. Contractor and its subcontractors will treat as confidential all City information, including plans, policies, requirements, financial and employment activities, specifications, drawings, blueprints and documents.

C. The use of any City equipment, rigging, blocking, hoist, or scaffolding by Contractor or a subcontractor, given, lent or rented will be under the distinct understanding that its uses it at its own risk and takes it "as is". Contractor will satisfy itself by examination as to its condition, assumes all responsibility therefore, and shall save City harmless from all claims and damages due to its use.

17. COMPLIANCE WITH ENVIRONMENTAL PROCEDURES

A. If, during the course of the work, Contractor encounters or becomes aware of any environmentally related issues, including the following, then Contractor shall immediately notify the City:

(1) the release or substantial threat of release of a hazardous substance;

(2) the discovery of materials or substances of unknown origin on or under the premises;

(3) the discovery of any underground storage tank.

B. Contractor shall not take any action in respect of such environmentally related issue without first obtaining the written authorization of the City.

C. Contractor shall indemnify and hold harmless the City from every claim, damage, loss, liability, action, complaint or suit for bodily injury, sickness, disease or death or damage to property arising out of any breach of its obligations to comply with the foregoing procedures.

18. TERMINATION FOR CONVENIENCE

A. Notice of Termination. City shall have the right to terminate this Agreement at any time, in whole or in part, for its convenience. Such termination shall be effected by delivery from City to Contractor of a written notice of termination specifying the extent to which performance of work under this Agreement is terminated and the date upon which such termination shall become effective. In the event of such termination, Contractor will, to the extent directed: stop work immediately; place no further orders or subcontracts for materials, labor, services or facilities; unless otherwise specified, terminate all subcontractors and orders to the extent that they relate to work terminated; complete the performance of the work not terminated; and take such other actions as may be necessary or requested by the City for the protection of the terminated work.

B. Submission of Termination Claim. After receipt of a notice of termination, Contractor shall submit to the City its termination claim, in the form prescribed by the City. If the entire Contract is terminated, such claim shall be submitted not later than 15 days from the effective date of termination and shall be based on the percentage of the completion of the work performed. Upon failure of the Contractor to submit its termination claim within the time allowed, the City may determine the amount, if any, due to the contractor with respect to the termination, and such determination shall be final.

C. Payment of Termination Claim. Subject to subparagraph (B) above, Contractor and the City may agree upon the whole or any part of the amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this provision, which amount may include a reasonable allowance for profit on work performed. However, such agreed amount shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated.

D. Audit of Termination Costs. For purposes of this paragraph, the amounts of the payments to be made by the City to the Contractor shall be based upon verification and/or audit by a certified public accounting firm designated by the City of the Contractor's actual allocable costs stated in Contractor's termination claim. Contractor shall make available to said accounting firm, at reasonable times at the office of the Contractor, accounting records relating to the work terminated hereunder.

E. In the event of termination of this Agreement for any reason, City will not be liable to Contractor for indirect, incidental or consequential damages, including loss of profits, whether under breach of contract, tort or any other theory.

19. TERMINATION FOR CAUSE

A. If, in the opinion of City, Contractor should so fail to make progress as to endanger performance of this Agreement in accordance with its terms, or if Contractor's work is inadequate, or if it should fail to make prompt payment to subcontractors or for material or labor, or violate any laws, ordinances or regulations, or otherwise violate any provision of this Agreement, or if Contractor becomes insolvent or a petition under any bankruptcy act is filed by or against the Contractor, then City may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part upon written notice to Contractor and proceed to complete or cause the work to be completed.

B. If fixed and agreed liquidated damages are provided in the Contract and if the City so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated

damages until such reasonable time as may be required for final completion of the work together with any excess costs incurred by the City in completing the work.

C. The rights and remedies of the City provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

20. CLEANING UP

Contractor shall at all times keep the site of the work free from accumulations of waste material or rubbish caused by its employees and subcontractors or the work. At the completion of the work, Contractor shall remove from the site all rubbish, implements and materials and shall leave the site in broom clean condition.

21. SUBCONTRACTORS

Within [five (5)] days after the award of any subcontract in excess One Dollar (\$1.00) by the Contractor, the Contractor shall deliver to the City a statement setting forth the name and address of the subcontractor and a summary description and the cost of the work subcontracted.

22. SUPERINTENDENCE BY CONTRACTOR

The Contractor shall have a competent foreman or superintendent, satisfactory to the City, on the work site at all times during the performance of the work. Said foreman or superintendent shall have the authority to act for the Contractor.

23. SET OFFS

Contractor agrees that City shall have the right to set off any amounts which may become payable by City to Contractor under this Agreement or any other transaction with Contractor, any amounts which Contractor may owe to City, whether arising under this Agreement or otherwise.

24. GENERAL

A. Governing Law. This Contract shall be governed and construed in accordance with the Laws of the State of Florida.

B. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter contained herein and shall supersede all prior oral and written understandings, agreements and proposals. No modification of this Contract shall be valid unless made in writing, referring to this Contract, and executed by City and Contractor.

C. Independent Contractor. Contractor, in performance of the Work under this Contract, is acting as an independent contractor and shall have the exclusive control of the manner and means of performing the work. Personnel and subcontractors supplied by Contractor hereunder are not City's employees, agents or representatives, and Contractor assumes full responsibility for their acts.

D. Work Rules. Contractor's employees, agents and subcontractors shall observe the working hours, working rules, holiday schedules and policies of City while working on City's premises.

E. Assignment. This Contract shall be binding upon the parties' respective successors and permitted assigns. Contractor may not assign this Contract or any of its rights or obligations hereunder without the prior written consent of City, and any such attempted assignment shall be void. Furthermore, no work to be performed on behalf of Contractor hereunder shall be

subcontracted to or performed on behalf of Contractor in an amount exceeding One Dollar (\$1.00) by any third party, except upon written permission of City. Contractor agrees that any assignment hereunder shall not relieve Contractor of its obligations hereunder.

F. Notices. Any notices or communication under this Contract shall be in writing and shall be personally delivered or sent by certified or registered mail return receipt requested or by confirmed facsimile transmission to the party receiving such communication at the address specified below or such other address as either party may in the future specify to the other party.

To City: City of Lake Wales
P.O. Box 1320
Lake Wales, FL 33859-1320

To Contractor: Tucker Construction & Engineering, Inc.
3535 Lake Alfred Rd.,
Winter Haven, FL 33881

G. Waiver. A failure of either party to exercise any right provided herein, shall not be deemed to be a waiver of any right hereunder.

H. Compliance with Laws. Contractor's employees, agents and subcontractors shall comply with all applicable U.S., state and local laws and regulations and union work rules in its performance of its obligations hereunder.

I. Public Records. Seller acknowledges that it is acting on behalf of a Public agency and that this Agreement is subject to the provisions of §119.0701, Florida Statutes, and that Seller must comply with the public records laws of the State of Florida. Seller shall:

(1) Keep and maintain public records required by the public agency to perform the service.

(2) Upon request from the public agency's custodian of public records, the Seller shall provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(3) The Seller 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 contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

(4) The Seller shall, upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Seller or keep and maintain public records required by the public agency to perform the service. If the Seller transfers all public records to the public agency upon completion of the contract, the Seller shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Seller keeps and maintains public records upon completion of the contract, the Seller shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

(5) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Seller of the request, and the Seller must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

(6) If Seller does not comply with a public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

(7) A Seller who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.

(8) If a civil action is filed against a Seller to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the Seller the reasonable costs of enforcement, including reasonable attorney fees, if:

(a) The court determines that the Seller unlawfully refused to comply with the public records request within a reasonable time; and

(b) At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Seller has not complied with the request, to the public agency and to the Seller.

(9) A notice complies with subparagraph (8)b if it is sent to the public agency's custodian of public records and to the Seller at the Seller's address listed on its contract with the public agency or to the Seller's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(10) A Seller who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

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

**City of Lake Wales
Attn: City Clerk
201 W. Central Ave
Lake Wales, FL 33853
843-678-4182 ext. 228
cvanblargan@cityoflakewales.com**

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first set forth above.

City of Lake Wales
City

Tucker Construction & Engineering, Inc..
Contractor

By:_____

By:_____

Kenneth Fields
Printed Name

Printed Name

Title: City Manager

Title:_____

Date:_____

Date:_____