

**SERVICE AGREEMENT FOR  
IFB NO. 09-0-2021/SZ  
PLAN REVIEW AND BUILDING INSPECTOR SERVICES**

**THIS AGREEMENT**, made this 11 day of March 2021, by and between the City of Palm Bay, 120 Malabar Road, SE, Palm Bay, FL 32907, a Florida municipal corporation and political subdivision of the State of Florida, hereinafter referred to as City and **C.A.P. GOVERNMENT, INC.** (FEIN Number 65-0121594), 343 Almeria Avenue, Coral Gables, FL, 33134, hereinafter referred to as "Contractor", for the term specified herein, with the City having the option to extend this Agreement for an additional period of time, upon mutual agreement of the parties, therefore, for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

**WITNESSETH:**

**1. DOCUMENTS**

The following documents are hereby incorporated into and made part of this agreement.

- 1.1. Specifications and Contract Documents prepared by the City of Palm Bay, "IFB #09-0-2021/SZ, Plan Review and Building Inspector Services" (Exhibit A).
- 1.2. Bid for the City of Palm Bay prepared by Contractor dated January 26, 2021, (Exhibit B).

All exhibits may also be collectively referred to as the "Documents". In the event of any conflict between the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. Specific direction from the City Manager (or designee).
- B. This Agreement dated March 11, 2021 and any attachments.
- C. Exhibit A
- D. Exhibit B

**2. SCOPE**

The Contractor is to perform the Work under the general direction of the City as defined in the Invitation for Bid and amendments, if any, the Invitation for Bid and any amendments thereto being attached hereto as Exhibit "A" (CITY's Invitation for Bid documents), incorporated by reference herein and made a part thereof as fully as if herein set forth.

Unless otherwise specified herein, the Contractor is to furnish all materials, tools, equipment, manpower, and consumables to complete the Work.

By signing this Agreement, the Contractor represents that it has thoroughly inspected the work site (as described in the Documents) and the weather, soil and water conditions that may affect it, and has thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the work and the conditions under which the work is to be performed.

**3. TERM OF AGREEMENT**

The period of this Agreement shall be for twelve (12) months, beginning on March 20, 2021 and ending on March 19, 2022. This Agreement may, by mutual written assent of the parties, be extended for four (4) additional twelve (12) month periods or portions thereof, up to a cumulative total of sixty (60) months.

**4. COMPENSATION**

The Contractor agrees to provide the services and materials as specified in its bid to the City at the hourly rates specified in said bid and amendments, if any, the bid and any amendments thereto being attached hereto as Exhibit "B", incorporated by reference herein and made a part hereof as fully as if herein set forth.

The amount as specified in Exhibit "B" may be increased or decreased by the City under this Agreement, through the issuance of a written Addendum.

Any prices specified in this Agreement or Addendum thereto, will remain firm for the term of this Agreement or Addendum period.

**5. PAYMENT**

Upon acceptance of work by using department of the City, employees and others, the City shall make payment to the Contractor in accordance with the Local Government Prompt Payment Act, Chapter 218, Florida Statutes.

The City reserves the right, with justification, to partially pay any invoice submitted by the Contractor when requested to do so by the using City department. All invoices shall be directed to the Accounts Payable Section, City of Palm Bay, 120 Malabar Road, SE, Palm Bay, FL 32907.

**NOTE: ALL INVOICES MUST CLEARLY INDICATE THE CITY PURCHASE ORDER NUMBER.**

**6. GENERAL CONDITIONS****6.1. Patents**

The Contractor shall pay all royalties and assume all costs arising from the use of, including but not limited to, any invention, design, process, materials, equipment, product or device in performance of the Work, which is the subject of patent rights or copyrights. For other good and valuable consideration, Contractor shall, at its own expense, hold harmless and defend the City, and all persons and entities defined as the "City" elsewhere in this Agreement (hereinafter and through the Agreement as "City"), against any claim, suit or proceeding brought against the City which is based upon a claim, whether rightful or otherwise, that the Work, or any part thereof, furnished under this Agreement, constitutes an infringement of any patent or copyright of the United States or any other country. The Contractor shall pay all damages and costs awarded against and/or assessed or paid by the City and acknowledges other and additional good and valuable consideration for this provision. This provision is supplemental to the following Section 6.2.

**6.2. Indemnification**

For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor, including but not limited to the Contractor's officers, officials, employees, representatives, agents, contractors officers,

etc., subcontractors and their officers, etc. (hereinafter Contractor) hereby agrees to indemnify, hold harmless and defend the City of Palm Bay, including but not limited to its officers, agents, subcontractors, officers, officials, representatives, volunteers, employees and all those others acting on the City's behalf (hereinafter City) against any and all liability, loss, cost, damages, expenses, claims or actions of whatever type or nature, including but not limited to attorney and expert fees and suit cost, for trials and appeals, that the City may pay, sustain, or incur arising wholly or in part due to any negligent or deliberate act, error or omission of Contractor in the execution, performance or non-performance or failure to adequately perform Contractor's obligation pursuant to this Agreement.

Nothing contained in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28 Florida Statutes, or to extend the City's liability beyond the limits established in said Section 768.28. No claim or award against the City shall include attorney's fees, investigative costs, extended damages, expert fees, suit costs or pre-judgment interest.

In addition, Contractor shall indemnify, defend and hold harmless City against all liability, costs, expense, expert witnesses' fees, attorney's fees, claims, losses or damages that the City may incur arising from the following:

1. A violation by Contractor of any applicable federal, state or local law, rule or regulation including, without limitation, performance conditions in this Agreement.
2. Any penalty or fine incurred by or assessed against City to the extent caused by any act of the Contractor;
3. Any injury, illness, disease, death or other harms suffered or incurred by any employee of Contractor, resulting from the failure of Contractor to comply with applicable health and safety procedures, regardless of whether or not the entity involved has adopted OSHA or EPA safety and health protocols and procedures;
4. Any patent or copyright infringement by Contractor;
5. Any lien or other claim by contractor inconsistent with this Agreement;
6. Any obligation of City resulting from Contractor's errors, omissions or breach of obligation.

### **6.3. Environmental Health and Safety**

Contractor shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Work. Contractor shall comply, and shall secure compliance with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Contractor. Contractor shall be responsible for examining all federal, state and local requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Work. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry or Contractor's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

Nothing contained in this Agreement shall affect Contractor's status as an independent contractor. Contractor shall ensure that the provisions of this Agreement are made

binding on all persons or entities who perform on Contractor's behalf. A violation of this provision shall be considered to be a material and substantial breach of this Agreement.

#### **6.4. Termination**

The City reserves the right to terminate this contract without cause by giving thirty (30) days prior notice to the contractor in writing of the intention to terminate.

The City may terminate with cause if at any time the contractor fails to fulfill or abide by any of the terms or conditions specified. Failure of the Contractor to comply with any of the provisions of this Agreement shall be considered a material breach of Agreement and shall be cause for immediate termination of the Agreement at the discretion of the City.

In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the contractor of such occurrence and Agreement shall terminate on the last day of current fiscal period without penalty or expense to the City.

Contractor understands and agrees that the City may immediately terminate this contract upon written notice if the Contractor is found to have submitted a false certification or any of the following occur with respect to the Contractor or a related entity: (i) for any contract for goods or services in any amount of monies, it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars (\$1,000,000) or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria.

#### **6.5. Notice of Deficiency**

If the Contractor is notified in writing of a fault, deficiency or error in the equipment, materials, Work or criminal records of employees provided within ten (10) days from the discovery of any fault, deficiency or error of the Work, the Contractor shall, at the City's option, either: 1) re-perform such portions of the Work to correct such fault, defect or error, at no additional cost to the City, or 2) refund to the City, any amounts paid by the City that are attributable to such portions of the faulty, defective or erroneous Work, including the costs for re-performance of the work provided by other Contractors.

#### **6.6. Default**

An event of default shall mean a breach of this Agreement by Contractor as determined by City. An event of default shall include but not be limited to the following:

- Contractor has not performed services on timely basis;
- Contractor has refused or failed to supply enough properly-skilled personnel;
- Contractor has failed to make prompt payment to subcontractors or suppliers for any services;
- Contractor has failed to fulfill representations made in this Agreement;
- Contractor has refused or failed to provide the Services as defined in this Agreement; or
- Contractor has failed to timely address a fault, deficiency or error in the equipment, materials, Work or criminal records of employees as provided in the Notice of Deficiency.

If a contractor is in default on its contract with the City, the City shall follow the procedures contained herein:

1. The City shall notify, in writing, the Contractors to adhere to contract terms and conditions. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure within a reasonable time period. The notice will also provide that, should it fail to perform within the time provided, the contractor will be found in default and removed from the City's approved vendor list.
2. Unless the Contractor corrects its failure to perform within the time provided, or unless the City determines on its own investigation that the Contractor's failure is legally excusable, the City shall find the Contractor in default and shall issue a second notice stating (i) the reasons the Contractor is considered in default, (ii) that the City will reprocure or has reprocured the commodities or services, and (iii) and the amount of the reprocurement if known.
3. The defaulting Contractor will not be eligible for award of a contract by the City until such time as the City is reimbursed by the defaulting Contractor for all reprocurement costs. Reprocurement costs may include both administrative costs and costs or price increases incurred or to be incurred as a result of the reprocurement.
4. Pursuant to Section 38.14, Procurement Code of Ordinance, the defaulting Contractor will be advised of their right to initiate written protest proceedings pursuant to Section 38.13 of the Procurement Ordinance within five (5) business days after the date of notification.
5. Until such time as it reimburses the City for all reprocurement costs and the City is satisfied that further instances of default will not occur, the defaulting Contractor shall not be eligible for award of a contract by the City. To satisfy the City that further instance will not occur; the defaulting Contractor shall provide a written corrective action plan addressing the original grounds for default.

The forgoing provisions do not limit, waive or exclude the City's remedies against the defaulting contractor at law or in equity.

#### **6.7. WARRANTY**

The Contractor warrants that the Work including, but not limited to the equipment, materials and employees provided shall conform to professional standards of care and practice in effect at the time the Work is performed, shall be of the highest quality and be free from all faults, defects or errors. Whenever required by the specifications of the Invitation for Bid, the Contractor warrants that all equipment and materials provided shall be new. If the Contractor is notified in writing of a fault, deficiency or error in the equipment, materials, Work or criminal records of employees provided within ten (10) days from the discovery of any fault, deficiency or error of the Work, the Contractor shall, at the City's option, either: 1) re-perform such portions of the Work to correct such fault, defect or error, at no additional cost to the City, or 2) refund to the City, any amounts paid by the City that are attributable to such portions of the faulty, defective or erroneous Work, including the costs for re-performance of the work provided by other Contractors.

**ALL EQUIPMENT AND MATERIALS PROVIDED AND USED BY THE CONTRACTOR SHALL BE MERCHANTABLE AND BE FIT FOR THE PURPOSE INTENDED.**

**THE CONTRACTOR SHALL BE LIABLE FOR SECONDARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE RESULTING FROM ANY WORK PERFORMED UNDER THIS AGREEMENT.**

**6.8. TIME OF COMPLETION**

The parties understand and agree that time is of the essence in the performance of this Agreement. Neither the Contractor nor the City shall be liable for any loss or damage resulting from any delay or failure to perform its contractual obligations within the time specified due to but not limited to acts of God, any force majeure, actions or regulations by any governmental entity or representative, strikes or other labor trouble, fire, natural or man-made disasters, or any other causes, contingencies or circumstances not subject to either the Contractor's or City's control, that prevent or hinder the performance of the Contractor's or City's contractual obligations. Any such causes of delay, even though existing on the date of the Agreement or on the date of the start of Work, shall extend the time of the Contractor's or City's performance by the length of the delays occasioned thereby, including delays reasonably incident to the resumption of normal Work schedules. However, under such circumstances as described herein, the City may at its discretion, cancel this Agreement at its sole discretion for the convenience of the City and the Contractor shall only be entitled to compensation for all work satisfactorily performed and the limitation of damages provision contained in Section 20 - LIMITATION OF LIABILITY shall apply.

**6.9. LIQUIDATED DAMAGES**

Parties agree that damages are difficult to determine but the following liquidated damages are agreed to be a reasonable cost for any delays: If the Contractor shall neglect, fail or refuse to complete the Work within the time specified, or any proper extension thereof granted by the City, then the Contractor hereby agrees, as part consideration for awarding the Agreement, to pay the City the sum of One-Hundred Dollars (\$100.00), for each and every calendar day that the Contractor shall be in default after the time stipulated in the Agreement for completing the Work. The Contractor and City acknowledge and agree that said sum is not a penalty but liquidated damages for breach of contract.

The City and Contractor agree that the damages that will be incurred by the City as a result of Contractor's delay in meeting a completion date are of a kind difficult to accurately estimate, and the Contractor further agrees that the amount herein provided is a reasonable forecast of the damages that will actually be incurred by the City in the event of any such delay and not a penalty.

**6.10 Insurance Requirements:** The Contractor, and its subcontractors, subconsultants, assignees and suppliers, at its own expense, shall keep in force and at all times maintain during the term of this Agreement:

**6.10.1 Commercial General Liability:** The contractor shall provide combined single minimum limits of \$1,000,000.00 each occurrence / \$2,000,000.00 general aggregate for bodily injury and property damage liability. This shall include premises/operations, products, completed operations, personal and advertising injury, and contractual liability, specifically confirming and insuring the indemnification and hold harmless clause of the contract. This policy of insurance shall be considered primary to and not contributing to any insurance maintained by the City of Palm Bay and shall name the City of Palm Bay as an additional insured. The policy of insurance shall be written on an "occurrence" basis and form.

**6.10.2 Automobile Liability:**

Contractor shall provide minimum limits of liability of \$1,000,000.00 each accident, combined single limit for bodily injury and property damage. This shall include coverage for:

- Owned Automobiles
- Hired Automobiles
- Non-Owned Automobiles

**6.10.3 Umbrella / Excess Liability:**

Contractor shall provide umbrella/excess coverage with limits of no less than \$1,000,000.00 excess of Commercial General Liability, Automobile Liability and Employers Liability. \*\*This coverage is optional if the Contractor has \$2,000,000 General Aggregate under the Commercial General Liability Policy\*\*

**6.10.4 Workers' Compensation Coverage:**

Full and complete Workers' Compensation Coverage, including coverage for Employer's Liability, as required by State of Florida law, shall be provided. Should the Named Vendor utilize a Professional Employer Organization, said Vendor acknowledges and agrees that all employees sent to the City of Palm Bay MUST be included on that PEO roster.

**6.10.5 Professional Liability Insurance or Errors and Omissions Insurance:**

Successful Bidder shall provide professional liability insurance, or Errors and Omissions Insurance, with a minimum limit of \$1,000,000.00 aggregate with respect to acts, errors or omissions in connection with professional services to be provided under this Agreement. Any deductible is not to exceed \$5,000.00 for each claim. Consultant represents it is financially responsible for the deductible amount.

**Insurance Certificates:**

The City of Palm Bay is to be specifically included as an additional insured on all certificates of insurance (with exception to Workers Compensation). Waiver of Subrogation is required for Commercial General Liability and Automobile Liability. All certificates must be received prior to commencement of service/work. In the event the insurance coverage expires prior to the completion of this contract, a renewal certificate shall be issued thirty - (30) days prior to said expiration date. The certificate shall provide a thirty - (30) day notification clause in the event of cancellation or modification to the policy.



The Contractor shall declare any self-insured retention or deductible amount in excess of \$5,000 for any policy. The City reserves the right to reject any self-insured retention or deductible in excess of \$5,000.

All insurance carriers shall be rated (A) or better by the most recently published A.M. Best Rating Guide. Unless otherwise specified, it shall be the responsibility of the contractor to ensure that all subcontractors comply with the insurance requirements set forth in this Agreement. The City may request a copy of the insurance policy according to the nature of the project. City reserves the right to accept or reject the insurance carrier.

Contractor shall obtain insurance on an "occurrence" basis if such insurance is available at commercially reasonable premium costs. Any insurance on a "claim made" basis shall be maintained for at least three (3) years after acceptance of the Work.

#### **7. ACCEPTANCE**

The City will be deemed to have accepted the Work after the Chief Procurement Officer is notified by the appropriate City department(s) of its satisfaction that the work for their respective department(s) is completed.

#### **8. CORRECTION OF WORK**

The Contractor shall promptly correct all Work rejected by the City for failing to conform to this Agreement. The Contractor shall bear all costs of correcting such rejected Work.

#### **9. RIGHT TO AUDIT RECORDS**

The City reserves the right to audit the records of the Contractor related to this Agreement at any reasonable time during the prosecution of the work included herein and for a period of three (3) years after termination of the date of the contract. The Contractor agrees to provide copies of any records necessary to substantiate payment requests to the City as may be requested by the City, solely at the cost of reproduction.

#### **10. PUBLIC RECORDS**

The City is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records law. Specifically, the Contractor shall:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform this service.
- B. Provide the agency with access to public records at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
- C. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
- D. Meet all requirements for retaining public records and transfers to the City, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

The failure of the Contractor to comply with the provisions set forth in this section shall constitute a material breach of Agreement and shall be cause for immediate termination of the Agreement.



**If the Contractor 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 the City of Palm Bay Procurement Department, 120 Malabar Road SE, Suite 200 Palm Bay, Florida 32907; 321-952-3424; or [procurement@pbfl.org](mailto:procurement@pbfl.org).**

#### **11. TIME IS OF THE ESSENCE**

The parties agree that time is of the essence in the completion of the Work called for under this Agreement. By executing this Agreement, Contractor affirms that it believes the schedule to be reasonable; provided, however, the parties acknowledge that the schedule might be modified as the City directs.

The Contractor agrees that all Work shall be prosecuted regularly, diligently, and uninterrupted at such a rate of progress that will ensure full completion thereof within the time specified.

#### **12. INFORMATION**

All information, including but not limited to data, documents, plans, and specifications furnished to or developed for the City by the Contractor or its employees, pursuant to this Agreement, excluding previously copywritten materials, shall be the sole property of the City and all rights therein are reserved by the City, except that the Contractor may disclose any such information to its corporate affiliates and their agents.

#### **13. EXTRA WORK**

The City, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement consisting of additions, deletions, or other revisions, the Agreement price and time being adjusted accordingly. All such changes in the Work shall be authorized by written Addenda to this Agreement and shall be executed under the applicable conditions of the Agreement.

If the Contractor plans to make a claim for an increase in the Agreement price or an extension in the Agreement Schedule/Term, written notice shall first be given to the City within ten (10) calendar days after the occurrence of the event giving rise to such a claim. The Contractor shall give this written notice to the City, together with written approval secured from the Procurement department before proceeding to execute the Work.

No claim for extra work will be considered valid by the City unless first approved by the City in writing with Contractor's claim submitted in writing.

#### **14. FAMILIARITY WITH THE WORK**

The Contractor by executing this Agreement acknowledges full, total and complete understanding of the extent and character of the Work required and the conditions surrounding the performance thereof. The City will not be responsible for or be bound by any claimed misunderstanding of the Work to be furnished or completed, or any misunderstanding of conditions surrounding the performance thereof. It is understood that the execution of this Agreement by the Contractor serves as its stated unequivocal commitment to fulfill all the conditions referred to in this Agreement.

**15. TITLE AND RISK OF LOSS**

The title and risk of loss to the Work shall pass from the Contractor to the City upon the City's final acceptance of the Work.

**16. INDEPENDENT CONTRACTOR, ASSIGNMENT AND SUBCONTRACTS**

In the performance of the Work, Contractor shall operate and have the status of an independent contractor and shall not act as or be an agent or employee of City.

This Agreement cannot be assigned without the written approval of the City. Assignment may be made solely at the discretion of the City, and the City's decision will be final. Contractor shall obtain the consent of City, in writing, of each subcontractor it intends to use before entering into a contract with any subcontractor.

Contractor shall advise each prospective subcontractor of these requirements and shall assure that each subcontractor complies with them.

**17. INSPECTION AND NON-WAIVER**

Contractor shall permit the representatives of City to inspect and observe the Work at all times.

The failure of City to insist upon strict performance of any other terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed by Contractor as waiver of City's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

**18. NOTICES**

All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

To the Contractor: Carlos A Penin, PE, President  
C.A.P. Government, Inc.  
343 Almeria Avenue  
Coral Gables, FL 33134

To the City: Chief Procurement Officer  
City of Palm Bay  
120 Malabar Rd SE  
Palm Bay, FL 32907

Copy to: City Manager  
City of Palm Bay  
120 Malabar Rd SE  
Palm Bay, FL 32907

**19. NO LIENS**

Contractor acknowledges that Contractor or any other person directly or indirectly acting for or through Contractor are legally unable to file a mechanic's or construction lien against the real property on which the work is performed or any part thereof or against any personal property or improvements thereon or make a claim against any monies due or to become due from the City to Contractor for or on account of any work, labor, services, material,

equipment, or other items furnished in connection with the Work or any change order, Contractor agrees to inform all subcontractors of such inability and further agrees to satisfy, remove, or discharge any liens or claims that may be filed at its own expense by bond, payment, or otherwise within twenty (20) days of the filing thereof or from receipt of written notice from the City.

Additionally, until such time as such lien or claim is satisfied, removed or discharged by Contractor, all monies due to Contractor or that become due to Contractor before the lien or claim is satisfied, removed or otherwise discharged shall be held by City as security for the satisfaction, removal and discharge of such lien and any expense that may be incurred while obtaining such. If Contractor shall fail to do so, City shall have the right, in addition to all other rights and remedies provided by this Agreement or by law, to satisfy, remove, or discharge such lien or claim by whatever means City chooses at the entire and sole cost and expense of Contractor which costs and expenses shall, without limitation hereby, include attorney's fees, litigation costs, fees and expenses and all court costs and assessments.

## **20. LIMITATION OF LIABILITY**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of this Agreement. For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Contractor expresses its willingness to enter into this Agreement with the knowledge that the Contractor's recovery from the City to any action or claim arising from the Agreement is limited to a maximum amount of the contract value less the amount of all funds actually paid by the City to Contractor pursuant to this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes, or to extend the City's liability beyond the limits established in said Section; and no claim or award against the City shall include attorney fees, investigative costs, expert fees, suit costs or pre-judgment interest. This section shall not prevent the City from taking corrective action against the Contractor.

## **21. MISCELLANEOUS PROVISIONS**

- 21.1.** The Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of Work under this Agreement.
- 21.2.** By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination.
- 21.3.** The Contractor's employees are required to obtain, at no charge, from the City's Human Resources Department, a security identification badge prior to performance

- of its awarded contract. This law is established by the City Council through the City Ordinance Number 2007-48, Public Protection Act, as amended by City Ordinance Number 2007-96, with an effective date of November 15, 2007.
- 21.4.** No waiver, alterations, consent or modification of any of the provisions of this Agreement shall be binding unless written and signed by the Chief Procurement Officer.
  - 21.5.** The Contractor shall procure all permits, licenses, and certificates for the proper execution and completion of the Work under this Agreement, including any approvals of plans or specifications as may be required or federal, state and local laws, ordinances, rules, and regulations.
  - 21.6.** Award of this contract shall impose no obligation on the City to utilize the vendor for all work of this type, which may develop during the contract period. This is not an exclusive contract. The City specifically reserves the right to concurrently contract with other companies for similar work if it deems such action to be in the City's best interest. In the case of multiple-term contracts, this provision shall apply separately to each term.
  - 21.7.** This Agreement shall be governed by and construed according to the laws of the State of Florida, and the rights of the parties hereto shall be construed and be subject to the laws of the State of Florida. The parties hereby waive the right to a trial by jury in any action, proceeding or counterclaim brought or filed by either of them against the other. Venue for any court action arising out of this Agreement shall be in Brevard County, Florida.
  - 21.8.** The undersigned hereby certify that this Agreement is made without prior understanding, agreement or connection with any corporation, firm or person who submitted bids for the Work covered by this Agreement and is in all respects fair and without collusion or fraud. As to Contractor, the undersigned hereby warrants and certifies that he/she is authorized to enter into this Agreement and to execute it on behalf of the Contractor as the act of the said Contractor, and the City will rely upon such execution by the Contractor's representative.
  - 21.9.** This Agreement is for the exclusive benefit of the parties. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement.
  - 21.10.** This Agreement, including Exhibits "A" and "B", contains all the terms and conditions agreed upon by the parties. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.
  - 21.11.** If any term or provision of this Agreement or the application thereof shall be invalid or unenforceable, the remainder of this Agreement shall be unaffected thereby and each remaining term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
  - 21.12.** If consultant receives a subpoena or summons or receives any other correspondence related to legal proceedings or any correspondence from an attorney or owner's representative in response to work done on behalf of the City under this Agreement, the Consultant must immediately notify the City Attorney's Office and the City Building Official. Any attendance required at a legal proceeding which the City was notified about and (if applicable) approved the Consultant to attend will be compensated as described in the Agreement at the applicable hourly rate(s) in Exhibit B.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals on the date first written above

Approved by City Council On: February 18, 2021

**ATTEST:**

Terese Jones, City Clerk

**CITY OF PALM BAY, FLORIDA**

Juliet Misconi, Chief Procurement Officer

Date

**C.A.P. GOVERNMENT, INC.**

(Signature)

Carlos A. Penin, PE, President

Name and Title

C.A.P. Government, Inc.

Company

03/02/2021

Date

**WITNESS:**

(to Contractor's Signature)

Name (Printed)

Signature