

AGREEMENT FOR CONTRACTUAL SERVICES

This Agreement is entered into effective the ____ day of _____, 2017 between The City of Gainesville, Florida, a municipal corporation, hereinafter referred to as "City", and Transmap Corporation, hereinafter referred to as "Contractor".

WITNESSETH

Whereas, The City of Coral Springs, issued an invitation to bid for a Comprehensive Pavement Management Plan dated September 24, 2014, Request for Proposal number 15-D-005, and

Whereas, The City of Palm Bay, wrote an independent agreement dated October 10, 2016 with the Contractor based on the City of Coral Springs invitation to bid for a Comprehensive Pavement Management Plan dated September 24, 2014, Request for Proposal number 15-D-005, and

Whereas, the City desires to write its own independent agreement to employ contractor to create a Comprehensive Pavement Management Plan for the City based on the City of Palm Bay agreement dated October 10, 2016.

Whereas, the Contractor is qualified to provide these services,

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto do mutually agree as follows:

1. **Term**. This Agreement is effective _____, through _____

The City's performance and obligation to pay under this Agreement is contingent upon a specific annual appropriation by the City Commission. The parties hereto understand that this Agreement is not a commitment of future appropriations.

2. **Scope of Services/Contract Documents**. The CONTRACTOR shall furnish Comprehensive Pavement Management Plan to the City as provided by the following enumerated Specifications and Documents ("Contract Documents") attached and made a part of this Agreement:

- A. This Agreement
- B. Transmap proposal to City dated July 20, 2017.
- C. City of Palm Bay agreement dated October 10, 2016
- D. City of Coral Springs RFP # 15-D-005 dated September 24, 2014

The Contract Documents constitute the entire agreement between the City and Contractor with respect to the Work. In the event of conflict or inconsistency between the Contract Documents, the order of precedence for interpretation shall be the order in which the Contract Documents are listed above. In the event of conflict or inconsistency within a document, the more specific reference to the matter shall prevail.

3. **Representations and Warranties.** By executing this Agreement, the Contractor makes the following express representations and warranties:

3.1. The Contractor is a professional qualified to perform the services described.

3.2. The Contractor warrants all the work performed by the Contractor is adequate and sufficient to meet the requirements and accomplish the purposes of the Agreement.

3.3. The Contractor acknowledges that the City's review of the work performed in no way diminishes the Contractor's warranty pertaining to the work performed.

4. **Method of Payment.** For all services actually, timely and faithfully performed, the Contractor will be paid as follows:

4.1. The Contractor shall be paid in accordance with prices submitted in its Response to Bid, Attachment C.

4.2. As a condition precedent for any payment, the Contractor shall submit a monthly invoice for all services that have been provided to the City during the prior thirty days, requesting payment for services properly rendered and expenses due. The Contractor's invoice shall describe with reasonable particularity each service rendered, the date thereof. The Contractor's invoice shall be accompanied by such documentation or data in support of expenses for which payment is sought as the City may require. Each invoice shall bear the signature of the Contractor, which signature shall constitute the Contractor's representation to the City that the services indicated in the invoice have reached the level stated, have been properly and timely performed as required herein, that the expenses included in the invoice have been reasonably incurred in accordance with this Contract, that all services provided are for a public purpose, that all obligations of the Contractor covered by prior invoices have been paid in full, and that the amount requested is currently due and owing, there being no reason known to the Contractor that payment of any portion thereof should be withheld. Submission of the Contractor's invoice for final payment shall further constitute the Contractor's representation to the City that, upon receipt by the City of the amount invoiced, all obligations of the Contractor to others, including its consultants, incurred in connection with the Project, will be paid in full. The Contractor shall submit invoices to the City at the following address:

City of Gainesville
Operations Division
405 NW 39th Avenue
Gainesville, FL 32609

4.3. Payments for all sums properly invoiced shall be made in accordance with the provisions of Chapter 218, Part VII, Florida Statutes ("Local Government Prompt Payment Act") to:

Transmap Corporation

3001 N. Rocky Point Drive E
Suite 200
Tampa, FL 33607

4.4 The City shall pay to the Contractor for the faithful performance of this Contract the sums due upon verified invoice(s) within thirty (30) days of receipt by Electronic Funds Transfer or Visa.

4.5 No additional reimbursable expenses will be paid by the City to the Contractor under this Agreement.

5. **Duties of the City.** The City shall have and perform the following duties, obligations, and responsibilities to the Contractor:

5.1. Provide a written request for services and a written Notice to Proceed.

5.2. Provide payment as provided herein to the Contractor for all services actually, timely and faithfully performed.

6. **Notice.** Except as otherwise provided in this Agreement any notice of default or termination from either party to the other party must be in writing and sent by certified mail, return receipt requested, or by personal delivery with receipt. For purposes of all notices, Contractor's and City's representative are:

City:

City of Gainesville
Operations Division Manager
405 NW 39th Avenue
Gainesville, FL 32609

Contractor: Transmap Corporation
3001 N. Rocky Point Drive E
Suite 200
Tampa, FL 33607

7. **Default and Termination.**

7.1. The failure of the Contractor to comply with any provision of this Contract will place the Contractor in default. Prior to terminating the Contract, the City will notify the Contractor in writing. This notification will make specific reference to the provision which gave rise to the default. The City will give the Contractor seven (7) days to cure the default. If the default situation is not corrected within the allotted time, the City may terminate this agreement.

7.2. The City may also terminate this agreement without cause by providing written notice to the Contractor. Upon such notice, Contractor will immediately discontinue all services affected (unless the notice directs otherwise); whether completed or in process. In the event of such termination for convenience, Contractor's recovery against City shall be

limited to that portion of the Agreement amount earned through the date of termination, but Contractor shall not be entitled to any other or further recovery against City, including, but not limited to, damages, consequential or special damages, or any anticipated fees or profit on portions of the work not performed.

- 7.3. If funds to finance this Agreement become unavailable, the City may terminate the Agreement with no less than twenty-four hours notice in writing to the Contractor. The City will be the final authority as to the availability of funds. The City will pay the Contractor for all work completed prior to any notice of termination.
- 7.4. The obligations of the City as to any funding required pursuant to this Agreement shall be limited to an obligation in any given year to budget and appropriate from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.

8. **Project Records.**

- 8.1 Florida has a very broad public records law and certain records of a contractor may be considered public records. Accordingly, by entering into an agreement with the CITY, CONSULTANT must:
 - A. Keep and maintain public records required by the CITY to perform the service.
 - B. Upon request from the CITY's custodian of public records, 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 in this chapter (119) or as otherwise provided by law.
 - C. 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 term and following completion of the Agreement if the CONSULTANT does not transfer the records to the CITY.
 - D. Upon completion of the Agreement, transfer, at no cost to the CITY, all public records in possession of the CONSULTANT or keep and maintain public records required by the CITY to perform the service. If the CONSULTANT transfers all public records to the CITY upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains

public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 952-334-5070, pubwrk@cityofgainesville.org, 405 NW 39th Ave, Box 58, Gainesville, FL 32627-0490.

- 8.2. Any document submitted to the City may be a public record and is open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Section 119.011(11), Florida Statutes. Any document is subject to inspection and copying unless exempted under Chapter 119, Florida Statutes.
- 8.3. During the term of this Agreement or license, Contractor may claim that some or all of Contractor's information, including, but not limited to, software, documentation, manuals, written methodologies and processes, pricing, discounts, or other considerations (hereafter collectively referred to as "Confidential Information"), is, or has been treated as, confidential and proprietary by Contractor in accordance with Florida Statutes, or other law, and is exempt from disclosure under the Public Records Act. Contractor shall clearly identify and mark Confidential Information as "Confidential Information" or "CI" and the City shall use its best efforts to maintain the confidentiality of the information properly identified by the Contractor as "Confidential Information" or "CI".
- 8.4. The City shall promptly notify the Contractor in writing of any request received by the City for disclosure of Contractor's Confidential Information and the Contractor may assert any exemption from disclosure available under applicable law or seek a protective order against disclosure from a court of competent jurisdiction. Contractor shall protect, defend, indemnify, and hold the City, its officers, employees and agents free and harmless from and against any claims or judgments arising out of a request for disclosure of Confidential Information. Contractor shall investigate, handle, respond to, and defend, using counsel chosen by the City, at Contractor's sole cost and expense, any such claim, even if any such claim is groundless, false, or fraudulent. Contractor shall pay for all costs and expenses related to such claim, including, but not limited to, payment of attorney fees, court costs, and expert witness fees and expenses. Upon completion of this Agreement or license, the provisions of this paragraph shall continue to survive. Contractor releases City from claims or damages related to disclosure by City.

9. **Insurance.** The Contractor will procure and maintain insurance throughout the entire term of this Agreement of the types and in the minimum amounts detailed in Attachment D.
10. **Permits.** The Contractor will obtain and pay for all necessary permits, permit application fees, licenses or any fees required.
11. **Laws & Regulations.** The Contractor will comply with all laws, ordinances, regulations, and building code requirements applicable to the work required by this Agreement. The Contractor is presumed to be familiar with all state and local laws, ordinances, code rules and regulations that may in any way affect the work outlined in this Agreement. If the Contractor is not familiar with state and local laws, ordinances, code rules and regulations, the Contractor remains liable for any violation and all subsequent damages or fines.
12. **Indemnification.**
 - 12.2. The Contractor shall indemnify and hold harmless the City, its officials, and employees from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Contract. This indemnification provision shall survive the termination of the Contract between the City and the Contractor.
 - 12.3. Nothing contained herein shall constitute a waiver by the City of sovereign immunity under the provisions of §768.28, Florida Statutes, or otherwise.
13. **Assignment of Interest.** The Contractor shall not assign, convey, pledge, sublet, transfer or otherwise dispose any interest in this Agreement and shall not transfer any interest in same without prior written consent of the City, which consent may be granted or withheld in the sole discretion of the City.
14. **Successors and Assigns.** The City and Contractor each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Agreement
15. **Independent Contractor.** In the performance of this Agreement, the Contractor is acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer, or associate of the City. The Contractor is solely responsible for the means, method, technique, sequence, and procedure utilized by the Contractor in the full performance of the Agreement, and any assignment or transfer by the Contractor of its interest in this Agreement without the written consent of the City shall be void. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City or Contractor, nor shall it be construed as giving any right or benefit hereunder to anyone other than the City or the Contractor.
16. **Collusion.** By signing this Agreement, the Contractor declares that this Agreement is made

without any previous understanding, Agreement, or connections with any persons, contractors or corporations and that this Agreement is fair, and made in good faith without any outside control, collusion, or fraud.

17. **Conflict of Interest.** The Contractor warrants that neither it nor any of its employees have any financial or personal interest that conflicts with the execution of this Agreement. The Contractor shall notify the City of any conflict of interest due to any other clients, contracts, or property interests.
18. **Third Party Beneficiaries.** This Agreement does not create any relationship with, or any rights in favor of, any third party.
19. **Severability.** If any provision of this Agreement is declared void by a court of law, all other provisions will remain in full force and effect
20. **Non Waiver.** The failure of any party to exercise any right in this Agreement shall not be considered a waiver of such right.
21. **Governing Law and Venue.** This Agreement is governed in accordance with the laws of the State of Florida. Venue shall be in Alachua County.
22. **Attachments.** All exhibits or attachments attached to this Agreement are incorporated into and made part of this Agreement by reference.
23. **Amendments.** The parties may amend this Agreement only by mutual written Agreement of the parties.
24. **Captions and Section Headings.** Captions and section headings used herein are for convenience only and shall not be used in construing this Agreement.
25. **Construction.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the parties. It is recognized that both parties have substantially contributed to the preparation of this Agreement.
26. **Counterparts.** This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument
27. **Entire Agreement.** This Agreement constitutes the entire agreement and supercedes all prior written or oral agreements, understandings, or representations.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed for the uses and purposes therein expressed effective as of the day and year first above-written.

CONTRACTOR WITNESS:

TRANSMAP CORPORATION

Title: _____

Title: _____

CITY WITNESS:

CITY OF GAINESVILLE

Title: _____

Anthony Lyons, City Manager

APPROVED AS TO FORM AND LEGALITY

City Attorney

Date: _____