

LEGISTAR NO.
201146

HEARTWOOD HOME CONSTRUCTION CONTRACT

THIS AGREEMENT ("Agreement") made and entered into as of the last signature date affixed hereto ("Effective Date") by and between the **CITY OF GAINESVILLE**, a Florida municipal corporation, whose mailing address is Post Office Box 490, Station 58, Gainesville, Florida 32627, ("City"), and _____, a Florida _____, whose address is _____, ("Contractor"), jointly referred to as the "Parties".

WHEREAS, the City is developing the Heartwood community, located near SE 8th Avenue and SE 15th Street, consisting of 34 lots to be developed into private residential homes, with 23 lots marketed as "Showcase" homes and 11 lots established as "Dreams2Reality" homes that will include a housing subsidy provided by the City; and

WHEREAS, the City has, through a competitive process (Request for Qualifications #CRAX-200029-GD: New Home Builders for Heartwood Neighborhood, Gainesville, FL), selected qualified builders to construct each of the residential homes in the Heartwood community; and

WHEREAS, for the Showcase homes, the future buyers/owners will contract directly with the qualified builders; however, for the Dreams2Reality homes the City will contract with the qualified builders for home construction; and

WHEREAS, the Parties desire to enter into this Agreement for the construction of the Dreams2Reality homes; and

NOW THEREFORE, in consideration of the mutual covenants as set forth below, the Parties agree as follows:

1. **Recitals**. The recitals above comprise a material part of this Agreement and are hereby incorporated by reference.
2. **Term**. This Agreement will become effective on the Effective Date and will remain in effect until the earlier of: 1) Parties have fully performed their obligations as set forth in this Agreement; or 2) this Agreement is terminated as provided herein.
3. **Contract Documents**. This Agreement consists of the following documents, whether attached to this Agreement or incorporated by reference (collectively the "Contract Documents"):
 - a. This Agreement, including any exhibits;
 - b. Proposals from builders in response to solicitation; and
 - c. Request for Qualifications #CRAX-200029-GD: New Home Builders for Heartwood Neighborhood, Gainesville, FL, including its addendums.

The Contract Documents constitute the entire agreement between the parties. 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. Conflict or inconsistency within a particular Contract Document will be resolved by having the more specific reference to the matter prevail.

4. **Specific Project**. This Agreement is for the Contractor's construction of a residential home according to

the Approved Plans as further described herein ("Project"):

- a. Heartwood Home Model Name and Number: _____
- b. Property address and description:

5. Reserved.

6. Definitions. The following terms used in this Agreement have the following meanings:

Approved Plans: The construction or architecture plans for specific Heartwood home models, as approved by the City or recorded in the public records governing the Heartwood community, including: 1) the "Declaration of Covenants, Conditions, and Restrictions for the Heartwood Community" recorded in Book 4570 Page 1751 of the Official Records of Alachua County; and 2) the 100% Conformed Documents for Heartwood Subdivision provided in January 2018 by DRMP, Inc.

Adequately Documented Request for Payment: Applications for payment must be submitted in detail reasonably sufficient for an audit thereof in accordance with the City's policies on the subject in effect at the time construction commences. Application for payment must include, at a minimum, the following information: the amount paid for labor, materials, and equipment; a description and associated costs of any applicable phases, bid packages, or parts of the work actually performed; previously invoiced amounts and credit payments made; the total amount the payment is for less any retainage; a summary of change orders to-date; and any lien waiver(s) and other documentation verifying payment to subcontractors and material suppliers.

Project Costs: Costs incurred and paid by Contractor and that: (i) are actual costs represented by invoice or other payment request; and (ii) are customary and reasonable for the Gainesville area as evidenced by prices generally paid by similar contractors over the past five (5) years; and (iii) include any and all fees and expenses incurred in the course of construction of the Project, including all costs of labor, materials, subcontractor profit, expenses, and allowances. The following items shall not be charged as Project Costs: salaries of Contractor's management and supervisory personnel, expenses of Contractor's offices, Contractor's overhead, Contractor's general expenses, and Contractor's capital expenses.

Reimbursement Date: The date by which the City must reimburse Contractor for all Project Costs. The Reimbursement Date shall be no later than thirty (30) calendar days from the date which Contractor provides to City an Adequately Documented Request for Payment for Project Costs according to the Approved Plans.

Substantial Changes: as reasonably determined by the City or the Contractor, depending on which party requests a Substantial Change.

7. Scope of Services; Contractor's Obligations.

- a. General. Contractor shall construct, or cause to be constructed, the Project in accordance with the Approved Plans and in accordance with all applicable laws, codes, statutes, ordinances, rules, and regulations. Contractor shall utilize local subcontractors, laborers, and suppliers to the greatest extent possible. Contractor asserts that Contractor is an Equal Opportunity Employer. All workmen, subcontractors, laborers, or any person working on the Project shall only have contractual privity with the Contractor and not the City, and the City understands and agrees that the City shall have no right of control over any such workmen, subcontractors, or laborers.

- b. Project Construction. The Contractor shall supervise and oversee the construction of the Project, using its best skill and judgment and pursuant to the current local customs and standards in the home building industry. Unless otherwise specifically noted, the Contractor shall contract for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the execution and completion of the Project. The Contractor shall pay all sales, consumer, use, and other similar taxes required by law and shall secure all permits, fees, and licenses necessary for the execution of the Project. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the work on the Project. At the completion of the Project the Contractor shall remove all of its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery, and surplus materials, and shall clean all glass surfaces and shall leave the work clean and move-in ready.
- c. Compensation. Contractor shall construct and complete the Project, including the complete closeout of all applicable building and construction permits, and receive from the City as compensation reimbursement for the Project Costs plus a fee equal to **eighteen percent (18%)** of the Project Costs, as defined herein, incurred in the construction of the Project (the "Project Fee"). Compensation for Contractor's overhead and profit is included within the Project Fee.
- d. Estimated Project Costs. Prior to the commencement of construction, the Contractor shall provide the City with an estimate of the projected Project Costs (hereinafter the "Estimated Project Costs"). The City hereby understands and acknowledges that the Estimated Project Costs is merely a good faith estimate for use in budgeting and the Contractor shall in no way be bound thereto.
- e. Commencement and Completion Dates. Contractor shall commence construction of the Project within 30 days after the Effective Date, continue such construction to substantial completion with due diligence, and shall complete construction of the Project within nine (9) months of the Effective Date ("Completion Date"), delays due to acts of God, government, supply of materials, subcontracted labor, wind, water, rain, or force majeure excepted.
- f. Construction Schedule. Upon commencement of construction of the Project, Contractor shall provide the City with a preliminary construction schedule showing the anticipated completion dates for the Project, and any updated construction schedules that show Substantial Changes to the preliminary schedule during the course of construction.
- g. Substantial Changes. If any Substantial Changes are proposed to be made to the Approved Plans, Contractor shall submit amended plans to the City for approval.
- h. Material Delays. The Contractor shall immediately notify the City in writing of any actual or reasonably anticipated material delays in the construction of the Project.
- i. Substantial Completion. Unless extended as provided herein, completion of the Project shall be deemed the date that the last of both parties has executed a Certificate of Substantial Completion, stating that the Project has been substantially completed according to the Approved Plans (hereinafter "Date of Substantial Completion"). Within thirty (30) days after either (1) the issuance of a Certificate of Occupancy, or (2) written notice of completion of the Project from the Contractor to the City, the City shall create a "punch list" which shall be completed by the City and returned to the Contractor. Upon receipt of the "punch list" from the City, the Contractor shall make every reasonable effort to substantially complete the items contained on the "punch list" to the extent that said items fall within the Approved Plans, or any amendments thereto, within thirty (30) days of the receipt thereof. Upon completion by the Contractor of the items contained on the "punch list" or upon the failure of the City to submit a "punch list" to the Contractor within the time permitted in this Section, the City shall sign a Certificate of Substantial Completion furnished by the

Contractor.

- j. Access to Project. The City, its employees, and contracted agents will have reasonable access to the Project during construction upon reasonable prior notice to Contractor.
- k. Relationship to Future Buyer/Owner; Warranty. Contractor shall have no contractual or business relationship with any buyer of the Project and its associated real property, as such buyer may be specified under any purchase and sale contract between the City and the buyer. Therefore, Contractor shall have no contact with or discussions with any such buyer and, in the administration and fulfillment of this Agreement, has a relationship with only the City. However, upon the City providing written notice to the Contractor of the closing date for any applicable purchase and sale contract for the Project property, Contractor shall on the closing date issue a standard builder's warranty as attached to this Agreement and incorporated herein as **Exhibit B** "Buyer's Warranty" to the benefit of such buyer and with buyer's receipt and execution of same.

8. City's Obligations.

- a. Funding. The City acknowledges, represents, and warrants to Contractor that the City has approved and budgeted funding for reimbursement to Contractor for the construction of the Project, provided Contractor complies with the terms and conditions of this Agreement. The City funds proposed to be provided to Contractor are expressly contingent upon Contractor's compliance at all times with the terms of this Agreement.
- b. Reimbursement. Upon the City's receipt of an Adequately Documented Request for Payment, the City shall on the Reimbursement Date reimburse Contractor the Project Costs plus compensate Contractor the Project Fee, provided Contractor is in compliance with the terms of this Agreement at the time payment is due.

9. Covenants and Representations.

- a. Contractor covenants with the City that:
 - 1. Contractor shall timely fulfill all the conditions herein that are in the control of Contractor and are the responsibility of Contractor.
 - 2. During the period in which the obligations of Contractor pursuant to this Agreement are in effect, Contractor shall cause to occur and to continue to be in effect those instruments, documents, certificates, and events contemplated by this Agreement that are applicable to, and the responsibility of, Contractor.
- b. Contractor represents and warrants to the City that the following statements are true and correct in all material respects:
 - 1. Contractor is a validly existing legal entity, authorized to do business in the State of Florida. Contractor has all requisite power and authority to carry on its business as now conducted and to enter into and perform its obligations of this Agreement and each instrument required to be executed by Contractor pursuant to this Agreement, and has consented to service of process in the State of Florida.
 - 2. This Agreement and each document required to be executed by Contractor pursuant to this Agreement has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, Contractor and neither the execution and delivery nor the compliance with the terms and provisions thereof: (i) requires the approval of any other party, except as has been obtained or noted herein; (ii) contravenes any law, judgment,

governmental rule, regulations, or order binding on Contractor; or (iii) results in any default under or creates any lien upon any property of Contractor.

3. This Agreement and each document to be executed by Contractor pursuant to this Agreement constitutes a legal, valid, and binding obligation of Contractor, enforceable against Contractor, in accordance with the Agreement's terms except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws which affect creditor's rights generally and subject to usual equitable principles if equitable remedies are invoked.
 4. There are no pending or, to the best knowledge of Contractor, threatened actions before any court or administrative agency against Contractor that: (i) question the validity of this Agreement; or (ii) are likely to materially adversely affect this Agreement or the financial condition of Contractor.
- c. The City represents and warrants to Contractor that the following statements are true and correct in all material respects:
1. The City validly exists under the laws of the State of Florida and has all requisite power and authority to enter into and perform the obligations of this Agreement.
 2. Each document which the City is or will be a party to has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the City, and neither the execution and delivery nor the compliance with the terms and provisions: (i) require the approval of any other party, except as has been obtained or noted herein; or (ii) contravenes any law, judgment, governmental rule, regulations, or order binding on the City or to which its property is subject.
 3. This Agreement, when fully executed by the Parties, will constitute a legal, valid, and binding obligation of the City, enforceable against the City, except as such enforceability may be limited by: (i) any laws which affect creditors' rights generally and subject to usual equitable principles if equitable remedies are invoked; or (ii) changes in enabling legislation.

10. Payment and Performance of Project. Provided that any subcontractor or supplier is not in default of any applicable construction subcontract between Contractor and such subcontractor or supplier for the construction of the Project, Contractor shall use commercially reasonable efforts to timely pay all applicable subcontractors or suppliers for authorized work performed on the subcontract. Contractor shall use commercially reasonable efforts to cause its subcontractors to timely pay their subcontractors' suppliers, laborers, and materialmen for authorized work performed on the Project pursuant to valid invoices approved by Contractor. Contractor shall bond or cause to be bonded the full amount of all liens recorded against the Project Property for alleged non-payment of any sums due for work performed pursuant to this Project.

11. Subject to Appropriations. The City-approved funds for this Agreement are subordinate in all respects to all debt service obligations of the City under bonds or other forms of debt currently outstanding or to be issued in the future. The obligations of the City as to any funding required pursuant to this Agreement are limited by and subordinate to any obligation in any given fiscal year to budget and appropriate from legally available sums in the City's annual budget. Notwithstanding this Agreement, the City may pledge any legally available 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

12. Insurance. Prior to commencement of construction and during the term of this Agreement, Contractor shall purchase and maintain the following types and amounts of insurance with an insurer rated A- or

better by A.M. Best:

- a. Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000.00 for bodily injury (or death), and \$1,000,000.00 property damage, with an aggregate of \$2,000,000 as required by Contractor's Lender.
- b. Full and complete Workers' Compensation Insurance Coverage as required by State of Florida law.
- c. Automobile Liability Insurance coverage in the minimum amount of \$1,000,000.00 per occurrence for BI/PD, including hired/non-owned vehicles regardless of number of passengers transported.
- d. The City must be named as an additional insured on all insurance policies required hereunder, except Worker's Compensation coverage. Contractor shall provide the City with a certificate of insurance evidencing the required coverage prior to the issuance of a building permit for the Project, and shall furnish City evidence of renewals of each such policy no less than thirty (30) days prior to the expiration of the applicable policy.

13. Indemnification. Contractor agrees to indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from and against any and all liability, losses, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions, and cost of actions, including reasonable attorney's fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with the Contractor's or its agents performance of construction of the Project in accordance with this Agreement, other than to the extent that Claims are resulting from the negligent acts or omissions or willful misconduct of the City, its elected or appointed officials, employee, or agents. This provision will survive the termination of this Agreement.

14. Default, Remedies, and Right to Terminate.

- a. Contractor's Default. Contractor's failure to comply with its obligations contained in this Agreement will be a material breach of this Agreement ("Default"; a Default following any applicable notice of cure period is referred to herein as an "Event Default"). The City shall provide written notice of Default to Contractor ("Notice of Default"). Contractor will have thirty (30) calendar days from the date of Contractor's receipt of the Notice of Default to cure such Default ("Initial Cure Period"). In the event the nature of the "Default" is such that it cannot reasonably be cured within such Initial Cure Period, then Contractor's cure period will be extended, so long as Contractor has commenced to cure such Default within said Initial Cure Period and Contractor diligently undertakes and pursues such cure to completion ("Extended Cure Period"). Contractor must provide the City with documentation evidencing that Contractor is diligently undertaking and pursuing such cure to completion. The foregoing notwithstanding, all monetary Defaults will be deemed capable of cure within thirty (30) days. During the Initial Cure Period or any Extended Cure Period, the City may suspend any reimbursement otherwise payable pursuant to this Agreement until the Default has been cured. Upon Contractor's failure to cure such Default within the Initial Cure Period or any Extended Cure Period, as applicable, the City may:
 1. If the Event of Default occurs prior to the Completion Date, the City may choose to terminate this Agreement. Upon termination, all obligations of the City and Contractor pursuant to this Agreement, including any reimbursement for Project Costs will be terminated and all obligations of the City and Contractor pursuant to this Agreement will then be forever discharged.
- b. City's Default. The City's failure to comply with its obligations contained in this Agreement shall

be a material breach of this Agreement ("City Default"; a City Default following any applicable notice of cure period is referred to herein as a "City Event of Default"). Upon such City Default, Contractor shall provide written notice of such City Default to the City ("Notice of City Default"). The City will have thirty (30) calendar days from the date of City's receipt of the Notice of City Default to cure such City Default ("Initial City Cure Period"). In the event the nature of the City Default is such that it cannot reasonably be cured within such Initial City Cure Period, then City's cure period will be extended, so long as City has commenced to cure such City Default within Initial City Cure Period and City diligently undertakes and pursues such cure to completion ("Extended City Cure Period"). City must provide Contractor with documentation evidencing that City is diligently undertaking and pursuing such cure to completion. The foregoing notwithstanding, all monetary Defaults will be deemed capable of cure within thirty (30) days. Upon City's failure to cure such Default within the Initial Cure Period or any Extended Cure Period, as applicable, Contractor may:

1. Require specific performance of the Agreement by the City, provided, however, the obligation of City to provide funding in any fiscal year under this Agreement is limited to an obligation in any given fiscal year to budget and appropriate from legally available sums the funding that is required for that fiscal year; or
2. Immediately terminate this Agreement, with all obligations of the City and Contractor pursuant to this Agreement terminated and all obligations of the City and Contractor pursuant to this Agreement forever discharged.

15. Successors and Assigns. The Parties to this Agreement may not assign or transfer any interest in this Agreement without the prior written consent of the other Parties, which shall not be unreasonably withheld. The Parties each bind the others and their respective successors and assigns in all respects to all the terms, conditions, covenants, and provisions of this Agreement.

16. Bankruptcy. In the event: (a) an order or decree is entered appointing a receiver of Contractor or its assets, which is not appealed (or if appealed is determined adverse to Contractor by such appeal); or (b) a petition is filed by Contractor for relief under federal bankruptcy laws or any other similar law or statute of the United States, which action is not dismissed, vacated, or discharged within ninety (90) days after the filing thereof, such event will not affect the City's rights under this Agreement and the City shall have the right to immediately terminate this Agreement.

17. No Liability or Monetary Remedy. The City and Contractor each hereby acknowledges and agrees that it is sophisticated and prudent in business transactions and proceeds at its own risk under advice of its own counsel and advisors and without reliance on the other party. City has agreed to compensate Contractor for construction of the Project pursuant to the terms of this Agreement. The only remedy available to Contractor for any breach by City is as set forth in Section 14 of this Agreement. City shall not be liable to Contractor for damages of any kind including direct, indirect, or consequential damages.

18. Severability. Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or unenforceable will be severable and may not be construed to render the remainder of this Agreement to be invalid, illegal, or unenforceable.

19. Relationship. This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture among the City and Contractor. Contractor cannot create any obligation or responsibility on behalf of the City or bind City in any manner. The City cannot

create any obligation or responsibility on behalf of Contractor or bind Contractor in any manner. Each party is acting for its own account and has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that none of the other parties hereto is acting as a fiduciary for or an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein. Contractor further represents and acknowledges that no one was paid a fee, commission, gift, or other consideration by Contractor as an inducement to entering into this Agreement.

- 20. Personal Liability.** No provision of this Agreement is intended, nor may any be construed, as a covenant of any official (either elected or appointed), officer, director, manager, employee, or agent of City or Contractor in an individual capacity and neither may any such individuals be subject to personal liability by reason of any covenant or obligation of City or Contractor hereunder.
- 21. Applicable Law and Venue.** This Agreement is governed by and must be construed in accordance with the laws of the State of Florida, notwithstanding any Florida conflict of law provision to the contrary. Each party submits to the jurisdiction of the State of Florida, Alachua County and the courts thereof and to the jurisdiction of the United States District Court for the Northern District of Florida, for the purposes of any suit, action, or other proceeding relating to this Agreement and agrees not to assert by way of a motion or a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.
- 22. Modification and Waiver.** This Agreement may only be modified or waived in writing signed by all the Parties. No course of dealing may be deemed a waiver of rights or a modification of this Agreement. The failure of any party to exercise any right in this Agreement may not be considered a waiver of such right. No waiver of a provision of this Agreement will apply to any other portion of this Agreement. A waiver on one occasion may not be deemed to be a waiver on other occasions.
- 23. No City Security.** In no event may City be required to provide security for repayment of any portion of any outstanding loans to Contractor with respect to the property making up the Project nor may City be obligated under any mortgage or promissory note as the same relate to such property.
- 24. Permits.** Contractor shall obtain all state and local permits or other governmental authorizations and approvals required by law in order to construct the Project.
- 25. Compliance with Laws.** Contractor shall at all times be in compliance with all applicable federal, state, and local laws, statutes, rules, and regulations with respect to the Project, including but not limited to the Gainesville City Code and City Code sections pertaining specifically to planning, zoning, and permitting. This paragraph is not intended to preclude City from granting Contractor certain waivers, exemptions, or variances under the Gainesville City Code as allowed therein, nor is it intended to preclude Contractor from challenging, in the manner provided for by applicable law, the application of any of the foregoing to the Project.
- 26. No Contract Zoning; No Contracting of Police Powers.** Nothing contained in this Agreement may be interpreted or construed as an approval, waiver, or agreement to approve or waive any development order, development permit, rezoning, comprehensive plan amendment, or any other governmental requirement that the City may have jurisdiction over in its regulatory capacity. Nothing contained in this Agreement may be interpreted or construed as contracting away the exercise of the police powers of the City.

- 27. Release.** No recourse may be had for any damages or claims based upon any representation, obligations, covenant, or agreement in this Agreement against any past, present, or future officer, member, legal counsel, employee, director, or agent of the City, either directly or through the City, under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of the City and any such officers, members, legal counsels, employees, directors, or agents of the City is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. This section will survive the termination or expiration of this Agreement.
- 28. Force Majeure.** Delays in any performance due to: fire, flood, earthquake, windstorm, or sinkhole; war, declaration of hostilities, revolt, civil strife, altercation, or commotion; strike or labor dispute; epidemic; archaeological excavation; or because of an act of God are deemed to be events of Force Majeure and such delays are excused in the manner herein provided. If such party is delayed for any of the events of Force Majeure, the date required for actions required will be extended by the number of calendar days equal to the total number of calendar days, if any, that such party is actually delayed. The party seeking excuse for nonperformance on the basis of Force Majeure shall give written notice to the other Parties specifying the cause of the anticipated delay, giving its actual or anticipated duration, and weekly thereafter, if such delay is continuing, written notice stating whether the condition continues and giving its actual or then anticipated duration. Each party seeking excuse from nonperformance on the basis of Force Majeure shall use its best efforts to rectify conditions causing a delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.
- 29. Time.** Time is of the essence in this Agreement. In computing time periods of fifteen (15) days or less, Saturdays, Sundays, and state or national legal holidays are excluded. Time periods of more than fifteen (15) days will be computed based on calendar days. Whenever a notice or performance is to be done on a Saturday or Sunday or on a legal holiday observed by the City, it will be postponed to the next business day.
- 30. Sovereign Immunity.** The Parties agree that nothing in this Agreement may be interpreted as a waiver of the City's sovereign immunity, as provided in Section 768.28, Florida Statutes, or otherwise.
- 31. Captions.** The captions and headings of sections or paragraphs used in this Agreement are for convenient reference only and will not limit, define, or otherwise affect the substance or construction of provisions of this Agreement.
- 32. Construction.** The Contractor shall: 1) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Agreement; and 2) expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement.
- 33. Living Wage.** The definitions, terms, and conditions of the City's living wage requirements set forth in Division 2 of Article IX of Chapter 2 of the City's Code of Ordinances shall apply to this Agreement. These requirements include that the service contractor/subcontractor: shall pay a living wage to each covered employee during the term of this Agreement, including any extension(s) to this Agreement; shall maintain records sufficient to demonstrate compliance with the living wage requirements; shall not

discharge, reduce the compensation of, or otherwise retaliate against any covered employee for filing a complaint, participating in any proceedings or otherwise asserting the requirement to pay a living wage; shall cooperate with any City audit or investigation concerning compliance with or a reported violation of the living wage requirements, including providing all requested documentation. Failure to comply with the City's living wage requirements shall be a material breach of this Agreement, enforceable by the city through all rights and remedies at law and equity.

34. Anti-Discrimination. Contractor shall not discriminate on the basis of race, color, religion, gender, national origin, marital status, sexual orientation, age, disability, or gender identity, or undertake any other unlawful forms of discrimination in the performance of this Agreement. Contractor understands and agrees that a violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

35. Amendments. This Agreement may be amended by mutual agreement of the Parties, and any amendment will become effective only when reduced to writing and signed by the duly authorized representative of each Party.

36. Right to Audit. The Contractor shall keep accurate and complete records and accounts pertaining to the performance of services under this Agreement, including: 1) Financial records and reports relating to use of funding; 2) Books, records, documents, invoices, and other evidence and accounting procedures and practices such as will permit the Contractor to sufficiently and properly reflect all direct costs of any nature associated with this Agreement; and 3) Records sufficient to document its performance under this Agreement.

These records shall be subject at all reasonable times to review, inspection, copy, and audit by persons duly authorized by the City. These records shall be kept for a minimum of five (5) years after termination of the Agreement. Records that relate to any litigation, appeals, or settlements of claims arising from performance under this Agreement shall be made available until a final disposition has been made of such litigation, appeals, or claims. This right to audit and inspect includes a right to interview any employees and clients of the Contractor to be assured of satisfactory performance of the terms and conditions of this Agreement.

37. Public Records. Florida has a very broad public records law and certain records of the Contractor may be subject to the Florida Public Records Act (Chapter 119, Florida Statutes). By entering into this Agreement with the City, the Contractor acknowledges that it will comply with this section and that failure by Contractor to comply with this section is a breach of this Agreement and the City may pursue all available remedies. A request to inspect or copy any public records, as defined in Section 119.011(12), Florida Statutes, relating to this Agreement must be made directly to the City. If the City does not possess the requested public records, the City shall immediately notify the Contractor of the request and the Contractor shall, within a reasonable duration of time, either provide the records to the City or allow the records to be inspected or copied. In addition, the Contractor shall:

- a) Keep and maintain all 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 by law;

- c) Ensure that all 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 this Agreement and following termination of this Agreement if the Contractor does not transfer the records to the City; and
- d) Upon termination of this Agreement, transfer to the City at no cost to the City all public records in possession of the Contractor or keep and maintain the public records required by the City to perform the service. If the Contractor transfers all public records to the City upon termination of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon termination of this Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically shall 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 CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Attention:
City Manager's Office, Mail Station 6
Post Office Box 490
Gainesville, Florida 32627-0490
Phone: 352-393-8675
Email: lynchzb@cityofgainesville.org

38. Construction. This Agreement may 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.

39. Notices. The Parties designate the following persons as the primary contact point for purposes of the day-to-day management of this Agreement, including without limitation, the receipt of Invoices, scheduling of meetings, and questions regarding this Agreement. The Parties understand and acknowledge that the below persons may not be the persons authorized to bind the Party with respect to this Agreement. For any notice(s) required to be provided pursuant to this Agreement, the parties shall provide such notice to the persons listed below. Any notices required to be given pursuant to this Agreement shall be effective upon being sent by either facsimile, e-mail, hand-delivery, by certified or registered mail (return receipt requested), or via overnight delivery service to the following addresses:

To the City:	Attention: City Manager City of Gainesville P.O. Box 490, MS 6 Gainesville, Florida 32627 e-mail: lynchzb@cityofgainesville.org
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with copy to:	Attention:
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To the Contractor: Attention:

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by duly authorized officials on the dates written below.

WITNESSES:

CITY OF GAINESVILLE

Sign: _____

Print Name: _____

By: _____

Lee Feldman
City Manager

Sign: _____

Print Name: _____

WITNESSES:

CONTRACTOR

Sign: _____

Print Name: _____

By: _____

Print Name: _____

Sign: _____

Print Name: _____

Title: _____

