

**RESOLUTION 16-43**

**BE IT RESOLVED** that the appropriate officers of the City are authorized but not required to execute and deliver on behalf of the City that certain Agreement between the City and Royal American Construction Company, Inc., relating to the West Bay Sewer Lift Station and Forcemain Project, in the basic amount of One Million, Five Hundred Fifty Eight Thousand, Nine Hundred Fifty One Dollars and Ninety Six Cents (\$1,558,951.96), in substantially the form of the agreement attached and submitted to the Council today, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED** in regular session this 14<sup>th</sup> day of January, 2016.

**CITY OF PANAMA CITY BEACH**

By: Gayle F. Oberst  
Gayle F. Oberst, Mayor

**ATTEST:**

Diane Fowler  
Diane Fowler, City Clerk

PANAMA CITY BEACH – WEST BAY LIFT STATION & FORCE MAIN PROJECT  
PROJECT NO. 023255.01

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SECTION 00050

AGREEMENT

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between THE CITY OF PANAMA CITY BEACH, FLORIDA, (hereinafter called "OWNER") and Royal American Construction Co., Inc., doing business as a Corporation (an individual), or (a partnership), or (a corporation), having a business address of 1002 W. 23<sup>rd</sup> Street, Suite 400, Panama City, FL 32405 (hereinafter called "CONTRACTOR") , for the performance of the Work (as that terms is defined below) in connection with the construction of **WEST BAY LIFT STATION & FORCE MAIN PROJECT** ("Project"), to be located at Panama City Beach, FL in accordance with the Drawings and Specifications prepared by Baskerville Donovan, Inc., the Engineer of Record (hereinafter called "Engineer") and all other Contract Documents hereafter specified.

OWNER and CONTRACTOR, for the consideration herein set forth, agree as follows:

1. The CONTRACTOR shall furnish, at its sole expense, all supervision, labor, equipment, tools, material, and supplies to properly and efficiently perform all of the work required under the Contract Documents and shall be solely responsible for the payment of all taxes, permits and license fees, labor fringe benefits, insurance and bond premiums, and all other expenses and costs required to complete such work in accordance with this Agreement (collectively the "Work"). CONTRACTOR'S employees and personnel shall be qualified and experienced to perform the portions of the Work to which they have been assigned. In performing the Work hereunder, CONTRACTOR shall be an independent contractor, maintaining control over and having sole responsibility for CONTRACTOR'S employees and other personnel. Neither CONTRACTOR, nor any of CONTRACTOR'S sub-contractors or sub-subcontractors, if any, nor any of their respective employees or personnel, shall be deemed servants, employees, or agents of OWNER.

2. The CONTRACTOR will commence the Work required by the Contract Documents within ten (10) calendar days after the date of the NOTICE TO PROCEED to be issued by OWNER in writing within thirty (30) calendar days from the date of this Agreement and will achieve Substantial Completion of the Work within the following schedule:

<u>Completion Milestone</u>	<u>Calendar Days Following Notice to Proceed or Timeframe</u>
Submit Purchase Order to City for Pipe and Precast Items	7
Construct Manholes 4, 4A and 5 and All Interconnecting piping and stub-outs (10 feet minimum)	12:00 AM March 19, 2016 to 12:00 AM March 28, 2016
Construct All Manholes, Sanitary Sewer and Lift Station Wetwell.	
Manholes	150
Construct All Other Work	180

Except to the extent the period for Substantial Completion is extended pursuant to the terms of the Contract Documents ("Contract Time"). Final Completion of the Work shall be achieved by CONTRACTOR within the time period set forth in Section 15.2 of Section 00100, General Conditions.

3. The CONTRACTOR agrees to pay the OWNER, as liquidated damages, the sum of five hundred dollars and zero cents (\$500.00) in US currency for each calendar day that expires after the Contract Time for Substantial Completion as more fully set forth in Section 15 of the General Conditions. In addition to this liquidated damage, an additional liquidated damage of two thousand dollars and zero cents (\$2,000.00) in US currency will be assessed for each calendar day that expires after the time period identified in Addendum 1 for the completion of the gravity sewer work to be completed between 12:00 AM

March 19, 2016 to 12:00 AM March 28, 2016.

4. The CONTRACTOR agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for the sum of \$1,558,951.96 as shown in the BID SCHEDULE, included within the Bid Proposal Form, as said amount may be hereafter adjusted pursuant to the terms of the Contract Documents ("Contract Price").
  
5. The term "Contract Documents" means and includes the following documents, all of which are incorporated into this Agreement by this reference:

Section 00010	ADVERTISEMENT FOR BIDS
Section 00020	INFORMATION FOR BIDDERS
Section 00030	BID PROPOSAL FORM
Section 00040	BID BOND
Section 00050	AGREEMENT
Section 00060	PERFORMANCE BOND
Section 00070	PAYMENT BOND
Section 00080	NOTICE OF AWARD
Section 00090	NOTICE TO PROCEED
Section 00095	STATEMENT UNDER SECTION 287.087, FLORIDA STATUTES, ON PREFERENCE TO BUSINESSES WITH DRUG-FREE WORKPLACE PROGRAMS
Section 00096	TRENCH SAFETY ACT CERTIFICATE OF COMPLIANCE
Section 00097	PUBLIC ENTITY CRIMES STATEMENT
Section 00099	CERTIFICATE OF INSURANCE
Section 00100	GENERAL CONDITIONS
Section 00800	SUPPLEMENTAL CONDITIONS
Section 00808	SALES TAX EXEMPTION ADDENDUM

DRAWINGS prepared by Baskerville Donovan, Inc.  
numbered G-000 through E-102 and dated November 2015.

SPECIFICATIONS prepared or issued by Baskerville Donovan, Inc.  
numbered 00010 – Advertisement for Bids through Appendix “F” – “Bay  
County Right of Way Use Permit” dated November 2015.

ADDENDA

No. 1, dated December 17, 2015

No. 2, dated December 29, 2015

No. 3, dated December 31, 2015

No.     , dated                                 , 20    

The Contract Documents also includes any written amendments to any of the  
above signed by the party to be bound by such amendment. The Contract  
Documents are sometimes referred to herein as the “Agreement”.

6. The OWNER will pay the Contract Price to the CONTRACTOR in the  
manner and at such times as set forth in Contract Documents.
7. This Agreement shall be binding upon all parties hereto and their respective  
heirs, executors, administrators, successors, and assigns.
8. This Agreement shall be governed by the laws of the State of Florida.
9. All notices required or made pursuant to this Agreement shall be in writing  
and, unless otherwise required by the express terms of this Agreement, may  
be given either (i) by mailing same by United States mail with proper postage

affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, Express Mail, Airborne, Emery, Purolator or other expedited mail or package delivery, or (iii) by hand delivery to the appropriate address as herein provided. Notices to OWNER required hereunder shall be directed to the following address:

If to Owner:

\_\_\_\_\_  
City of Panama City Beach  
\_\_\_\_\_  
110 South Arnold Road  
\_\_\_\_\_  
Panama City Beach, FL 32413  
ATTENTION: \_\_\_\_\_  
Mario Gisbert, City Manager  
Fax No.: \_\_\_\_\_  
(850) 233-5108

If to Contractor:

\_\_\_\_\_  
Royal American Construction Co., Inc.  
\_\_\_\_\_  
1002 W. 23<sup>rd</sup> Street, Suite 400  
\_\_\_\_\_  
Panama City, FL 32405  
ATTENTION: \_\_\_\_\_  
Joey Chapman, President  
Fax No.: \_\_\_\_\_  
(850) 769-8981

Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

10. CONTRACTOR recognizes that OWNER is exempt from sales tax and may wish to generate sales tax savings for the Project. Accordingly, to the extent directed by and without additional charge to OWNER, CONTRACTOR shall comply with and fully implement the sales tax savings program as more fully described in the Sales Tax Exemption Addendum. If required by OWNER, the Sales Tax Exemption Addendum shall be made a part of the Contract Documents, the form of which is set forth in Section 00808.
  
11. The failure of OWNER to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a continuing waiver of any such provision or provisions or of

its right thereafter to enforce each and every such provision.

12. Each of the parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by this Agreement.
13. Should any provision of the Agreement be determined by a court with jurisdiction to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.
14. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural. The term "including" is not limiting, and the terms "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.
15. For this Project, OWNER has designated a Project Representative to assist OWNER with respect to the administration of this Agreement. The Project Representative to be utilized by OWNER for this Project, shall be Mr. Albert E. Shortt, P.E. – Utilities Director.

16. CONTRACTOR acknowledges and agrees that no interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which the OWNER, PROJECT REPRESENTATIVE, or ENGINEER may be responsible, in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONTRACTOR expressly acknowledges and agrees that it shall receive no damages for delay. CONTRACTOR's sole remedy, if any, against OWNER will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This section shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Work is delayed due to the fault or neglect of OWNER or anyone for whom OWNER is liable, and such delays have a cumulative total of more than 90 calendar days, CONTRACTOR may make a claim for its actual and direct delay damages accruing after said 90 calendar days as provided in Section 00800 Supplemental Conditions, Contract Claims and Changes. Except as expressly set forth in this section, in no event shall OWNER be liable to CONTRACTOR whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, special, indirect, incidental, or consequential damages of any kind or nature whatsoever.

17. INSURANCE - BASIC COVERAGES REQUIRED

The CONTRACTOR shall procure and maintain the following described insurance on policies and with insurers acceptable to OWNER. Current Insurance Service Office (ISO) policies, forms, and endorsements or equivalents, or broader, shall be used where applicable.

These insurance requirements shall not limit the liability of the CONTRACTOR. The insurance coverages and limits required of CONTRACTOR under this Agreement are designed to meet the minimum requirements of OWNER and the OWNER does not represent these types or amounts of insurance to be sufficient or adequate to protect the CONTRACTOR'S interests or liabilities. CONTRACTOR alone shall be responsible to the sufficiency of its own insurance program.

The CONTRACTOR and the CONTRACTOR'S subcontractors and sub-subcontractors shall be solely responsible for all of their property, including but not limited to any materials, temporary facilities, equipment and vehicles, and for obtaining adequate and appropriate insurance covering any damage or loss to such property. The CONTRACTOR and the CONTRACTOR'S sub-contractors and sub-subcontractors expressly waive any claim against OWNER arising out of or relating to any damage or loss of such property, even if such damage or loss is due to the fault or neglect of the OWNER or anyone for whom the OWNER is responsible. The CONTRACTOR is obligated to include, or cause to be included, provisions similar to this paragraph in all of the CONTRACTOR'S subcontracts and its subcontractors' contracts with their sub-subcontractors.

The CONTRACTOR'S deductibles/self-insured retention's shall be disclosed to OWNER and are subject to OWNER'S approval. They may be reduced or eliminated at the option of OWNER. The CONTRACTOR is responsible for the amount of any deductible or self-insured retention. Any deductible or retention applicable to any claim or loss shall be the responsibility of CONTRACTOR and shall not be greater than \$25,000, unless otherwise agreed to, in writing, by OWNER.

Insurance required of the CONTRACTOR or any other insurance of the CONTRACTOR shall be considered primary, and insurance of OWNER shall be considered excess, as may be applicable to claims or losses which arise out of the Hold Harmless, Payment on Behalf of OWNER, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract or lease.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE  
COVERAGE

The CONTRACTOR shall purchase and maintain workers' compensation and employers' liability insurance for all employees engaged in the Work, in accordance with the laws of the State of Florida, and, if applicable to the Work, shall purchase and maintain Federal Longshoremen's and Harbor Workers' Compensation Act Coverage. Limits of coverage shall not be less than:

\$1,000,000	Limit Each Accident
\$1,000,000	Limit Disease Aggregate
\$1,000,000	Limit Disease Each Employee

The CONTRACTOR shall also purchase any other coverage required by law for the benefit of employees.

The CONTRACTOR shall provide to OWNER an Affidavit stating that it meets all the requirements of Florida Statute 440.02 (15) (d).

COMMERCIAL GENERAL LIABILITY COVERAGE

CONTRACTOR shall purchase and maintain Commercial General Liability Insurance on a full occurrence form. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage, Products and Completed Operation Liability Coverages and shall not exclude coverage for the "X" (Explosion), "C" (Collapse) and "U" (Underground) Property Damage Liability exposures. Limits of coverage shall not be less than:

Bodily Injury, Property Damage & Personal Injury Liability	\$1,000,000 Combined Single Limit Each Occurrence, and
	\$2,000,000 Aggregate Limit

The General Aggregate Limit shall be specifically applicable to this Project. The Completed Operations Liability Coverages must be maintained for a period of not less than three (3) years following OWNER'S final acceptance of the project.

The CONTRACTOR shall add OWNER as an additional insured through the use of Insurance Service Office Endorsements No. CG 20.10.10.01 and No. CG 20.37.10.01 wording or equivalent, or broader, an executed copy of which shall be attached to or incorporated by reference on the Certificate of Insurance to be provided by CONTRACTOR pursuant to the requirements of the Contract Documents.

BUSINESS AUTOMOBILE LIABILITY COVERAGE

The CONTRACTOR shall purchase and maintain Business Automobile Liability Insurance as to ownership, maintenance, use, loading and unloading of all of CONTRACTOR'S owned, non-owned, leased, rented or hired vehicles with limits not less than:

Bodily Injury & Property Damage	\$1,000,000 Combined Single Limit Each Accident
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EXCESS OR UMBRELLA LIABILITY COVERAGE

CONTRACTOR shall purchase and maintain Excess Umbrella Liability Insurance or Excess Liability Insurance on a full occurrence form providing the same continuous coverages as required for the underlying Commercial General, Business Automobile and Employers' Liability Coverages with no gaps in continuity of coverages or limits with OWNER added by endorsement to the policy as an additional insured in the same manner as is required under the primary policies, and shall not be less than \$10,000,000 ,each occurrence and aggregate as required by OWNER.

ADDITIONAL INSURANCE

The Owner requires the following additional insurance:

None required at this time.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement in two (2) copies each of which shall be deemed an original on the date first written above.

(SEAL)

OWNER:

CITY OF PANAMA CITY BEACH,  
FLORIDA

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

Diane Fowler - City Clerk

NAME: Mario Gisbert  
(Please type)

TITLE: City Manager

\_\_\_\_\_  
Amy Myers, Esq. - City Attorney (as to form only)

CONTRACTOR:

Royal American Construction Co, Inc.

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_

NAME: \_\_\_\_\_  
(Please Type)

NAME \_\_\_\_\_  
(Please Type)

ADDRESS: 1002 W. 23<sup>rd</sup> St., Ste. 400  
Panama City, FL 32405

END OF SECTION 00050