

9722.05

**AGREEMENT
(UTILIZING CLAY COUNTY RFP #13/14-8)**

BETWEEN

THE CITY OF JACKSONVILLE

AND

M. GAY CONSTRUCTORS, INC.

FOR

INSTALLATION OF SPORTS FIELD LIGHTING AT RAY GREENE PARK

THIS AGREEMENT is made and entered into in duplicate this 10 day of April, 2015 (hereinafter the "Effective Date"), by and between the CITY OF JACKSONVILLE (hereinafter the "CITY"), a municipal corporation existing under the Constitution and the laws of the State of Florida, and M. GAY CONSTRUCTORS, INC. (hereinafter the "Contractor"), a Florida profit corporation with principal office at 11865 Industry Drive, Jacksonville, Florida 32218, for the installation of sports field lighting at Ray Greene Park (hereinafter the "Project").

RECITALS:

WHEREAS, effective January 29, 2014, Clay County, Florida awarded Bid No. 13/14-8 (hereinafter the "County Contract") with various suppliers and installers of equipment and amenities for parks and playgrounds, including Contractor; and

WHEREAS, said County Contract is in full force and effect until February 11, 2017, and was competitively procured and awarded by Clay County as contracting authority according to Florida law; and

WHEREAS, the Jacksonville Procurement Code, more particularly Section 126.211, *Ordinance Code*, authorizes and allows CITY to use, *inter alia*, contracts of other governmental entities, including states and counties, which have been competitively procured and awarded; and

WHEREAS, the County Contract is broad enough to include the Project and Contractor has agreed to allow CITY to use the County Contract; and

WHEREAS, it is in the best interests of the parties to use the County Contract for the Project and to add those contractual provisions CITY is required to use by ordinance or policy; now therefore

IN CONSIDERATION of the premises and of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, the parties agree as follows:

ARTICLE 1: Incorporation of Recitals:

The above-stated recitals are accurate, true, and correct and are made a part hereof and are incorporated herein by this reference.

ARTICLE 2: Engagement of Contractor:

CITY hereby engages Contractor and Contractor hereby accepts said engagement for the purpose of installing the Project for CITY, as described in and according to the provisions of the County Contract and its exhibits, work and services descriptions, and quotations made thereunder and the quotation submitted to Clay County by Contractor (hereinafter the "Services"), together identified as **Composite Exhibit 1** and by this reference made a part hereof and incorporated herein, and in accordance with the other provisions required by law, ordinance, or policy for CITY contained in this Agreement. Said **Composite Exhibit 1** is on file in CITY's Office of General Counsel, 117 West Duval Street, Suite 480, Jacksonville, Florida 32202. With respect to the Project, the provisions, terms, and conditions of the County Contract shall apply unless specifically preempted herein. Therefore, any conflict between the provisions of this Agreement and those in the County Contract shall be resolved in favor of this Agreement, with the provisions of this Agreement superseding any conflicting provisions in the County Contract, but only to the extent of any conflict.

ARTICLE 3: Coordination and Services Provided by CITY:

CITY shall designate for the Project a Project Coordinator who will, on behalf of CITY, coordinate with Contractor and administer this Agreement according to the terms and conditions contained herein and in the exhibit(s) attached hereto and made a part hereof. It shall be the responsibility of Contractor to coordinate all Project-related activities with the designated Project Coordinator. CITY's Project Coordinator shall be: Amy Ver Beek Brown (Telephone: (904) 255-7910; FAX: (904) 255-7940; Email: AmyVBB@coj.net).

ARTICLE 4: Duration of Agreement/Pricing Available to Other Entities:

The term of this Agreement shall commence on the Effective Date and shall continue and remain in full force and effect as to all its terms, conditions, and provisions as set forth herein through a period of time which is the earlier of the Contractor's completion and CITY's acceptance of the Project within the time period set forth in any purchase order or twelve (12) months from the Effective Date, unless sooner terminated as provided in **Composite Exhibit 1**. During said period of time, the Services provided hereunder shall be available to all using agencies and other political subdivisions, boards, agencies, or authorities existing in Duval County that may desire to purchase the same at the contract price provided herein.

ARTICLE 5: Payments for Services of Contractor:

5.1. Except as provided in Section 5.2 hereof, CITY will compensate Contractor for the Services purchased hereunder in accordance with purchase orders issued and used by the City of Jacksonville Procurement Division; *provided however*, payment invoices shall be sent to the authorized CITY representative as specified in said purchase order or other subsequent written instrument signed by CITY's Project Coordinator.

5.2. Notwithstanding any contrary provision in **Composite Exhibit 1**, the maximum indebtedness of CITY for all fees, reimbursable items, or other costs for the Project provided

and installed by Contractor pursuant to this Agreement shall not exceed the sum of EIGHTY-FIVE THOUSAND EIGHT HUNDRED AND NO/100 USD (\$85,800.00).

ARTICLE 6: Notice:

In addition to the notice requirement in **Composite Exhibit 1**, notice to CITY under this Agreement shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

Tony Lopez, Director	Greg Pease, Chief
Parks, Recreation and Community Services	Procurement Division
214 North Hogan Street, Suite 433	214 North Hogan Street
Jacksonville Florida 32202	Jacksonville, Florida 32202

ARTICLE 7: Laws, Ordinances, Rules, and Regulations:

As required by Section 126.108(b), *Ordinance Code*, in providing the Services for the Project, Contractor must comply with any and all applicable federal, state, and local laws, rules, regulations, and ordinances, as the same exist and may be amended from time to time. Such laws, rules, regulations, and ordinances shall include, but are not limited to, Chapter 119, Florida Statutes (the Florida Public Records Law), and Section 286.011, Florida Statutes (the Florida Sunshine Law), as they apply to the work contemplated in this Agreement. If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this article shall be incorporated into and become a part of the subcontract.

ARTICLE 8: Conflict of Interest:

The parties will follow the provisions of Section 126.112, *Ordinance Code*, with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with CITY, to the extent the parties are aware of the same.

ARTICLE 9: Prompt Payment:

As required by Chapter 126, Part 6, *Ordinance Code*, notwithstanding any contrary provisions in **Composite Exhibit 1**, CITY's prompt payment provisions shall be as follows:

9.1 *Generally*. When Contractor receives payment from CITY for labor, services, or materials furnished by subconsultants or subcontractors and suppliers hired by Contractor, Contractor shall remit payment due (less proper retainage) to those subconsultants, subcontractors, and suppliers within fifteen (15) calendar days after Contractor's receipt of payment from CITY. Nothing herein shall prohibit Contractor from disputing pursuant to the terms hereof all or any portion of a payment alleged to be due to its subconsultants, subcontractors, and suppliers. In the event of such dispute, Contractor may dispute the disputed portion of any such payment only after Contractor has provided notice to CITY and to the subconsultant, subcontractor, or supplier whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to CITY and said subconsultant, subcontractor, or supplier within ten (10) calendar days after Contractor's receipt of payment from CITY. Contractor shall pay all undisputed amounts due within the time limits imposed by this section.

9.2. *Jacksonville Small Emerging Business Enterprise ("JSEB") and Minority Business Enterprise ("MBE") Participation*. Notwithstanding Chapter 126, Part 6, *Ordinance Code*, Contractor shall pay all contracts awarded with certified JSEB's and MBE's, as defined therein, their pro rata share of their earned portion of the progress payments made by CITY under this Agreement within seven (7) business days after Contractor's receipt of payment from CITY (less proper retainage). The pro rata share shall be based on all work completed, materials and equipment furnished, or services performed by the certified JSEB or MBE at the time of payment. As a condition precedent to progress and final payments to Contractor, Contractor shall provide to CITY with its requisition for payment, documentation that

sufficiently demonstrates that Contractor has made proper payments to its certified JSEB's or MBE's from all prior payments Contractor has received from CITY. Contractor shall not unreasonably withhold payments to certified JSEB's and MBE's if such payments have been made to Contractor. If Contractor withholds payment to its certified JSEB's or MBE's, which payment has been made by CITY to Contractor, Contractor shall return said payment to CITY. Contractor shall provide notice to CITY and to the certified JSEB's or MBE's whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to CITY and said JSEB's or MBE's within five (5) calendar days after Contractor's receipt of payment from CITY. Contractor shall pay all undisputed amounts due within the time limits imposed in this section. The failure to pay undisputed amounts to the JSEB's or MBE's within seven (7) business days shall be a breach of this Agreement, compensable by one percent (1%) of the outstanding invoice being withheld by CITY, not as a penalty but as liquidated damages to compensate for the additional contract administration by CITY.

9.3. *Third Party Liability.* The Prompt Payment requirements hereunder shall in no way create any contractual relationship or obligation between CITY and any subconsultant, subcontractor, supplier, JSEB, MBE, or any third party or create any CITY liability for Contractor's failure to make timely payments hereunder. However, Contractor's failure to comply with the Prompt Payment requirements shall constitute a material breach of Contractor's contractual obligations to CITY. As a result of said breach, CITY, without waiving any other available remedy it may have against Contractor, may: (i) issue joint checks and (ii) charge Contractor a 0.2% daily late payment interest charge or charges specified in Chapter 126, *Ordinance Code*, for JSEB's or MBE's and in Chapter 218, Florida Statutes, for non-JSEB's or non-MBE's, whichever is greater.

ARTICLE 10: Governing State Law/Severability/Venue:

The rights, obligations, and remedies of the parties as specified under the Agreement shall be interpreted and governed in all aspects by the laws of the State of Florida. Should any provision of the Agreement be determined by the courts to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions shall not be impaired. Venue for litigation of the Agreement shall be in courts of competent jurisdiction located in Jacksonville, Duval County, Florida.

ARTICLE 11: Counterparts:

The parties agree that for the execution of this Agreement, time is of the essence. Therefore, this Agreement and all amendments thereto may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. The parties further agree that facsimile (“fax”) transmission of all signatures with originals to follow shall constitute and be evidence of an executed Agreement.

[Remainder of page is left blank intentionally. Signature page to follow immediately]

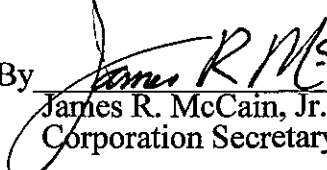
Cleveland Ferguson III
Deputy Chief Administrative Office
For: Mayor Alvin Brown
Executive Order No. 2015-01

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____, 2015, at Jacksonville, Florida.

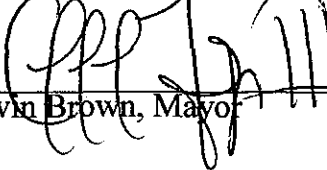
and year first above written.

ATTEST


CITY OF JACKSONVILLE

By 
James R. McCain, Jr.
Corporation Secretary



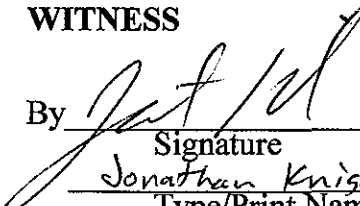
By 
Alvin Brown, Mayor


In compliance with the *Finance Code* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement, and provision has been made for the payment of the monies provided therein to be paid from the following account:


Director of Finance
9722-05

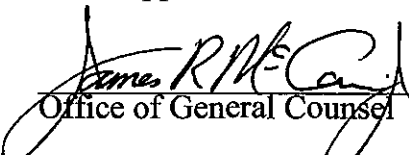
WITNESS

M. GAY CONSTRUCTORS, INC.

By 
Signature
Jonathan Knisley
Type/Print Name
Project Manager
Title

By 
Signature
Michael Gray
Type/Print Name
President
Title

Form Approved:


Office of General Counsel