

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT ("Agreement"), deemed effective on this ___ day of October 2015 (the "Effective Date") is by and among CITY OF AVON PARK (the "City"), BERKLEY INSURANCE COMPANY ("Berkley") and their respective agents, partners, officers, directors, members, affiliates, predecessors, successors, successors in interest, heirs, and beneficiaries. The City and Berkley shall sometimes hereinafter be collectively referred to as the "Parties."

RECITALS

WHEREAS, pursuant to a October 13, 2014 contract (the "Contract") between the City and L&SF Engineering Consultants, Corp. ("L&SF"), L&SF was to serve as the contractor of record for Airport Drainage Improvements, which consisted of, among other things, the "turn-key" construction of a new retention pond in the southeastern portion of the Avon Park Airport with connecting gravity sewer pipes and swales and an outfall lift station located in the City of Avon Park, Florida (the "Project");

WHEREAS, Berkley issued Payment and Performance Bonds Numbered 0186491 naming L&SF as Principal and the City as Obligee;

WHEREAS, the City notified L&SF and Berkley of L&SF's defaults and breaches of Contract;

WHEREAS, in accordance with the Bond, the City:

- (a) gave Berkley and L&SF the required notice under paragraph 3.1 that it was considering declaring a Contractor Default;
- (b) declared a Contractor Default, terminated the Contract, and notified Berkley under paragraph 3.2; and

(c) agreed to pay the Balance of the Contract price under paragraph 3.3;

WHEREAS, Berkley has conducted an investigation and has elected, under paragraph 5 of the Performance Bond, to pay the City the Settlement Sum identified in paragraph 2 below, in order to fully settle and compromise in full any and all claims the City has against Berkley or the Performance Bond; and

WHEREAS, the Parties now desire to set forth their Agreement in writing.

NOW, THEREFORE, for and in consideration of the payment of the Settlement Sum identified in paragraph 2 below, the mutual covenants set forth herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. The recitals set forth above are true and correct and incorporated herein by reference.

2. Berkley shall pay the City the total sum of One Hundred Fifty-Five Thousand and 00/100 Dollars (\$155,000.00) (the "Settlement Sum"), the sufficiency of which the City hereby acknowledges. Berkley shall pay the Settlement Sum to Saxon Gilmore & Carraway, P.A. Trust Account, c/o J. Frazier Carraway, Esq. 201 East Kennedy Boulevard, Suite 600, Tampa, Florida 33602 on or before October 19, 2015.

3. Upon payment of the Settlement Sum in full, the City shall be deemed to have released, acquitted, and forever discharged Berkley and the Performance Bond from any and all claims, warranty claims, defect claims, cross-claims, actions, causes of action, demands, rights, damages, costs, expenses, and attorneys' fees claims, that the City has, or may hereafter have related in any way to or arising out of the Project, the Performance Bond (including, without limitation, any and all common law and/or statutory bad faith claims related in any way to

Berkley's handling of the City's claims against the Performance Bond), and the Contract. The City's release herein includes a release of claims made for direct and indirect damages, liquidated damages, consequential damages, past loss of use damages, and future loss of use damages.

4. Upon payment of the Settlement Sum, the City shall return the original Performance Bond (or a true and accurate copy of the Performance Bond) marked "CANCELLED" on its face and initialed by the City's representative with the authority to execute this Agreement.

5. Neither the execution of this Agreement, nor the payment of the Settlement Sum, shall be deemed an admission of any fact or of any liability.

6. The Parties recognize and agree that there are no third-party, incidental, donee, direct, or third-party beneficiaries to this Agreement.

7. This Agreement shall be deemed to constitute a contract made and entered into under the laws of the State of Florida. For all purposes, this Agreement shall be construed and governed in accordance with the laws of the State of Florida. Any suit concerning this Agreement that arises between the parties shall be brought in state court, in a court of competent jurisdiction within the state of Florida, with exclusive venue lying in Hillsborough County, Florida.

8. If any party is required to take action to enforce the rights, duties, obligations, or responsibilities created by this Agreement or by Florida law, the party substantially prevailing on the merits of the issues being contested shall be entitled to recover: all reasonable attorney's fees and all costs (including, without limitation, expert witness' costs); all reasonable attorney's fees and all costs incurred on appeal; all reasonable attorney's fees and all costs for post-judgment

proceedings, including without limitation proceedings to establish entitlement to and/or the amount of reasonable fees and costs; and all reasonable attorney's fees and all costs of collection of a judgment.

9. The Parties agree to cooperate fully to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms, conditions, and intent of this Agreement.

10. The Parties understand and agree that the promises and undertakings set forth in this Agreement are the sole consideration for the Agreement and that the conditions stated herein are contractual and not mere recitals. The representations and warranties made herein shall survive closing of this settlement. Anything herein to the contrary notwithstanding, this Agreement may be fully enforced by any action at law or in equity, and nothing herein shall preclude or be construed to preclude any action at law or in equity to enforce the provisions of this Agreement.

11. The Parties hereby acknowledge that they are and have been represented by counsel in connection with the negotiation of this Agreement, that the provisions of this Agreement and the legal effects thereof have been fully explained to them, and that they have entered into this Agreement freely and voluntarily and without coercion or undue influence. The Parties further agree that this Agreement may be executed in multiple counterparts and via facsimile or electronically communicated transmissions, all of which, when taken together shall be treated as one original Agreement for all purposes.

12. Notwithstanding anything contained herein to the contrary, the Parties do hereby expressly agree that it is not their intent to cancel, modify, alter, or in any way amend the Payment Bond, which shall remain in full force and effect.

THE SIGNATORIES TO THIS AGREEMENT ACKNOWLEDGE THAT THEY HAVE READ THE FOREGOING AGREEMENT, FULLY UNDERSTAND ITS TERMS AND CONDITIONS, AND AGREE TO BE BOUND BY ALL OF ITS TERMS AND CONDITIONS.

CITY OF AVON PARK

BERKLEY INSURANCE COMPANY

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

Counsel: _____

Counsel: _____