

**AGREEMENT  
BETWEEN THE  
CITY OF AVON PARK  
AND  
EXCAVATION POINT, INC.  
FOR  
LAKE VERONA NORTHWEST BASIN, BEST MANAGEMENT PRACTICES PROJECT  
(14-100)**

THIS AGREEMENT is made and entered into by and between THE CITY OF AVON PARK, a municipality of the State of Florida, whose address is 110 East Main Street, Avon Park, Florida 33825, hereinafter referred to as the "CITY," and EXCAVATION POINT, INC., a private corporation, whose address is 7944 South George Boulevard, Sebring, Florida 33875, hereinafter referred to as the "CONTRACTOR."

WITNESSETH:

WHEREAS, the CITY desires to engage the CONTRACTOR to complete the work of the Lake Verona Northwest Basin, Best Management Practices Project, hereinafter referred to as the "PROJECT"; and

WHEREAS, the CONTRACTOR represents that it possesses the requisite skills, knowledge, expertise and resources and agrees to provide the desired services to the CITY; and

WHEREAS, the CITY and the CONTRACTOR have agreed on the type and extent of services to be rendered by the CONTRACTOR and the amount and method of compensation to be paid by the CITY to the CONTRACTOR for services rendered.

NOW THEREFORE, the CITY and the CONTRACTOR, in consideration of the mutual terms, covenants and conditions set forth herein, agree as follows:

1. INDEPENDENT CONTRACTOR. The CONTRACTOR will perform as an Independent Contractor and not as an employee, representative or agent of the CITY.
2. PROJECT MANAGER AND NOTICES. Each party hereby designates the employee set forth below as its respective Project Manager. Project Managers will assist with PROJECT coordination and will be each party's prime contact person. Notices and reports will be sent to the attention of each party's Project Manager by U.S. mail, postage paid, by nationally recognized overnight courier, or personally to the parties' addresses as set forth in the introductory paragraph of this Agreement. Notice is effective upon receipt.

Project Manager for the CITY:  
Julian DeLeon  
The City of Avon Park  
110 East Main Street  
Avon Park, Florida 33825

Project Manager for the CONTRACTOR:  
Tal Rancourt  
Excavation Point, Inc.  
7944 South George Boulevard  
Sebring, Florida 33875

Any changes to the above representatives or addresses must be provided to the other party in writing.

- 2.1 The CITY'S Project Manager is hereby authorized to approve requests to extend a PROJECT task deadline set forth in this Agreement. Such approval must be in writing, explain the reason for the extension and be signed by the City's Project Manager. The CITY'S Project Manager is not authorized to approve any time extension which will result in an increased cost to the CITY or which will exceed the expiration date set forth in Paragraph 5, Contract Period.
3. SCOPE OF WORK. The CONTRACTOR, upon written notice to proceed from the CITY, agrees to furnish all equipment, tools, materials, labor and all other things necessary to complete the PROJECT, and perform in accordance with the terms and conditions of this Agreement, the Special Project Terms and Conditions, set forth in Exhibit "A," the CITY'S Request For Bids, RFB #14-100, including all Addenda, and the CONTRACTOR'S response to RFB #14-100 which are both incorporated herein by reference, and Exhibit "B" CONTRACTOR'S Progress Schedule. Time is of the essence in the performance of each obligation under this Agreement. Any changes to this Scope of Work and associated costs, except as provided in Subparagraph 2.1 herein, must be mutually agreed to in a formal written amendment approved by the CITY and the CONTRACTOR prior to being performed by the CONTRACTOR, subject to the provisions of Paragraph 4, Compensation.
- 3.1 No acceptance or approval by the CITY of any subcontractor, supplier or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of the CITY to reject defective work or shall create any CITY liability for the acts or omissions of these individuals or entities.
- 3.2 Change Orders may be issued by the CITY Project Manager for additional work on an as needed basis for ancillary PROJECT services. The CONTRACTOR will provide a cost estimate and performance schedule for completing the Change Order. Upon approval of the cost estimate and performance schedule, the CITY Project Manager will issue the CONTRACTOR a notice to proceed with the Change Order. The parties agree that payment for any such ancillary PROJECT services is budgeted as contingency and is not to exceed the contingency amount established by the CITY. Prior to issuing a Change Order under this provision the CITY Project Manager must document the reason for the Change Order and obtain written approval from all appropriate CITY staff in accordance with the CITY'S Signature Authority.
4. COMPENSATION. For satisfactory completion of the PROJECT, the CITY will pay the CONTRACTOR the sum of Five Hundred Nine Thousand Three Hundred Twenty-Nine Dollars (\$509,329.00). Except as provided below, the CITY will have no obligation beyond this amount. Payment will be made to the CONTRACTOR on a Unit Price basis in accordance with the PROJECT Budget and individual Change Orders issued to the CONTRACTOR. Payment will be made in accordance with the Local Government Prompt Payment Act, Part VII of Chapter 218, Florida Statutes (F.S.), upon receipt of a proper invoice as defined in subparagraph 4.1.

Accounts Payable  
City of Avon Park  
110 E. Main Street  
Avon Park, Florida 33825

Such invoices shall be stamped with the "in date" when received. In addition to sending

an original invoice to the CITY'S Accounts Payable Section as required above, copies of invoices may also be submitted to the CITY'S Project Manager in order to expedite the review process. Failure of the CONTRACTOR to submit invoices to the CITY in the manner provided herein will relieve the City of its obligation to pay within the aforementioned timeframe.

- 4.1. All invoices must include the following information: (1) CONTRACTOR'S name, address and phone number (include remit address, if different than principal address in the introductory paragraph of this Agreement); (2) CONTRACTOR'S invoice number and date of invoice; (3) CITY Agreement number; (4) Dates of service; (5) CONTRACTOR'S Project Manager; (6) CITY'S Project Manager; (7) Progress Report with the CONTRACTOR Project Manager's assessment of the PROJECT'S actual progress as compared to the Progress Schedule; and (8) Supporting documentation necessary to satisfy auditing purposes, for cost and project completion. Invoices that do not conform with this paragraph will not be considered a proper invoice. Disputes will be resolved by a hearing before the City Council. If an invoice does not meet these form requirements, the CITY'S Project Manager will, within four (4) days of receipt notify the CONTRACTOR in writing that the invoice is improper and indicate what corrective action on the part of the CONTRACTOR is needed to make the invoice proper
- 4.2. If an invoice does not meet the requirements of the Project under this Agreement, the CITY'S Project Manager will, within ten (10) days of receipt, notify the CONTRACTOR in writing that the invoice is improper and indicate what corrective action on the part of the CONTRACTOR is needed to make the invoice proper. If a corrected invoice is provided to the CITY that meets the requirements of the Agreement, the invoice will be paid within twenty-five (25) days after the date the corrected invoice is received by the CITY.
- 4.3. In the event any dispute or disagreement arises during the course of the PROJECT, including those concerning whether a deliverable should be approved by the CITY, the CONTRACTOR will continue to perform the PROJECT work in accordance with the CITY'S instructions and may claim additional compensation. The CONTRACTOR is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by providing the details and basis of the dispute with a request for additional information, additional compensation, or schedule adjustment, as appropriate, to the CITY'S Project Manager no later than ten (10) days after the precipitating event. If not resolved by the Project Manager, the dispute will be forwarded to the City Council for a public hearing. The City Council will issue a final determination. The CONTRACTOR will proceed with the PROJECT in accordance with the CITY'S determination; however, such continuation of work will not waive the CONTRACTOR'S position regarding the matter in dispute. No PROJECT work will be delayed or postponed pending resolution of any disputes or disagreements.
- 4.4. Each CONTRACTOR invoice must include the following certification, and the CONTRACTOR hereby delegates authority by virtue of this Agreement to its Project Manager to affirm said certification:

"I hereby certify that the costs requested for payment, as represented in this

invoice, are directly related to the performance under the Lake Verona Northwest Basin, Best Management Practices Project agreement between The City of Avon Park and Excavation Point, Inc. are allowable, allocable, properly documented, and are in accordance with the approved project budget."

- 4.5. The CITY will hold back a retainage of ten percent (10%) of each invoice amount. Retainage will not be held on permits, insurance, bond, utility charges and plant maintenance. Retainage will be released by the CITY and the CONTRACTOR in accordance with the Local Government Prompt Payment Act, Part VII of Chapter 218, F.S. , after beneficial use of the Project is achieved. Prior to the CITY'S release of final payment, the CONTRACTOR must provide the CITY with a properly executed Affidavit stating that the CONTRACTOR has complied with the Prompt Payment Act with respect to all lower tier entities such as subcontractors, suppliers, etc., and that all taxes have been paid, a Contractor's Final Payment Affidavit (Exhibit "E") and a Consent of Surety to Final Payment (Exhibit "F"). Prior to final payment request, the CONTRACTOR'S Project Manager shall request in writing that the CITY'S Project Manager to produce a single list of items required to render complete, satisfactory, and acceptable under this Agreement including all supporting documents, as to the Project completion ("List"). The CITY'S Project Manager shall produce such List and submit it to the CONTRACTOR'S Project Manager for review within five (5) days of the CONTRACTOR'S request. In the event that the CITY'S Project Manager and the CONTRACTOR'S Project Manager disagree as to the proper List, they shall meet and attempt to resolve their differences in good faith. If they are unable to so resolve the dispute, the CONTRACTOR may seek dispute resolution before the City Council.
- 4.6. The CITY may, in addition to other remedies available at law or equity, retain such monies from amounts due CONTRACTOR as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against the CITY. The CITY may set off any liability or other obligation of the CONTRACTOR or its affiliates to the CITY against any payments due the CONTRACTOR under any contract with the CITY. The CITY reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, releases of liens, or any other things required by this Agreement have been submitted to the satisfaction of the CITY'S Project Manager.
5. CONTRACT PERIOD. This Agreement will be effective upon execution by all parties and will remain in effect through June 30, 2015, unless terminated, pursuant to Paragraph 12 or 13 below, or as amended in writing by the parties.
6. PROJECT RECORDS AND DOCUMENTS. The CONTRACTOR, upon request, will permit the CITY to examine or audit all PROJECT related records and documents during or following completion of the PROJECT at no cost to the CITY. Payments made to the CONTRACTOR under this Agreement shall be reduced for amounts found to be not allowable under this Agreement by an audit. If an audit is undertaken by the CITY, all required records shall be maintained until the audit has been completed and all questions arising from it are resolved. The CONTRACTOR will maintain all such records and documents for at least three (3) years following completion of the PROJECT.
- 6.1. Pursuant to Subsection 119.071(3)(b), F.S., building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict

the internal layout and structural elements of a building, or other structure owned or operated by the CITY are exempt from the inspection, examination and duplication of public records provisions of Subsection 119.07(1), F.S., and Subsection 24(a), Article I of the State Constitution. Information made exempt by Subsection 119.071(3)(b), F.S., may only be disclosed to other governmental entities if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to licensed architects, engineers, or contractors who are performing work on or related to the building or other structure; or upon a showing of good cause before a court of competent jurisdiction. Entities or persons receiving such information are required to maintain the exempt status of the information. The CONTRACTOR agrees to include the above provision in all agreements with subcontractors that are related to the CONTRACTOR'S performance under this Agreement, and to which the provisions of Chapter 119, F.S., also apply.

7. OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS. All documents, including reports, drawings, estimates, programs, manuals, specifications, and all goods or products, including intellectual property and rights thereto, purchased under this Agreement with CITY funds or developed in connection with this Agreement will be and will remain the property of the CITY.
8. REPORTS. The CONTRACTOR will provide the CITY with any and all reports, models, studies, maps, or other documents resulting from the PROJECT at no cost to the CITY.
9. INDEMNIFICATION. The CONTRACTOR agrees to indemnify and hold harmless the CITY and all CITY agents, employees and officers from and against all liabilities, claims, damages, expenses or actions, either at law or in equity, including attorney fees and costs and attorney fees and costs on appeal, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR, its agents, employees, subcontractors, assigns, heirs or anyone for whose acts or omissions any of these persons or entities may be liable during the CONTRACTOR'S performance under this Agreement. This provision shall survive the termination or expiration of this Agreement. This provision does not constitute a waiver of the CITY'S sovereign immunity or extend the CITY'S liability beyond the limits established in Section 768.28, F.S.
10. INSURANCE REQUIREMENT. The CONTRACTOR must maintain during the entire term of this Agreement, insurance in the following kinds and amounts or limits with a company or companies authorized to do business in the State of Florida and will not commence work under this Agreement until the CITY has received an acceptable certificate of insurance showing evidence of such coverage. Certificates of insurance must reference the CITY Agreement Number and Project Manager.
  - 10.1 Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office without restrictive endorsements, or equivalent, with the following minimum limit and coverage:

\$1,000,000 Per Occurrence

As applicable, supplemental liability insurance must include explosion, underground and collapse hazard (XCU)
  - 10.2 Vehicle liability insurance, including owned, non-owned and hired autos with the

following minimum limits and coverage:

Bodily Injury Liability per Person.....	\$100,000
Bodily Injury Liability per Occurrence.....	\$300,000
Property Damage Liability.....	\$100,000
or	
Combined Single Limit.....	\$500,000

- 10.3 The CITY and its employees, agents, and officers must be named as additional insured on the general liability policy to the extent of the CITY'S interests arising from this Agreement.
- 10.4 CONTRACTOR must carry workers' compensation insurance in accordance with Chapter 440, F.S., and maritime law, if applicable (navigable waters). If CONTRACTOR does not carry workers' compensation coverage, CONTRACTOR must submit to the CITY both an affidavit stating that the CONTRACTOR meets the requirements of an independent contractor as stated in Chapter 440, F.S. and a certificate of exemption from workers' compensation coverage.
- 10.5 The CONTRACTOR must deliver to the CITY, prior to commencing any work under this Agreement, a Performance, Payment and Guarantee bond which is satisfactory to the CITY and equal to one hundred percent (100%) of the contract amount as set forth below in Paragraph 11.
- 10.6 CONTRACTOR must notify the CITY in writing of the cancellation or material change to any insurance coverage required by this Agreement. Such notification must be provided to the CITY within five (5) business days of the CONTRACTOR'S notice of such cancellation or change from its insurance carrier.
- 10.7 The CONTRACTOR must obtain certificates of insurance from any subcontractor otherwise the CONTRACTOR must provide evidence satisfactory to the CITY that coverage is afforded to the subcontractor by the CONTRACTOR'S insurance policies.

11. BONDING REQUIREMENTS. Prior to the effective date of this Agreement, the CONTRACTOR, at its sole expense, will provide the CITY with a Performance, Payment and Guarantee Bond (Exhibit "G") in the amount of Five Hundred Nine Thousand Three Hundred Twenty-Nine Dollars (\$509,329.00) as security for the performance of all the CONTRACTOR'S obligations under this Agreement pursuant to the terms and conditions of Section 255.05, F.S. The bond must be in a form and with sureties that are acceptable to the CITY and must provide that it will remain in full force and effect during the entire term of this Agreement, plus one (1) year from the date of acceptance of the PROJECT by the CITY. The CONTRACTOR agrees to repair, replace or otherwise correct any defects in the work performed or furnished according to the terms of this Agreement which become apparent prior to the expiration of the bond. If the CITY determines that any part of the PROJECT is defective and requires repair or replacement during the lifetime of the bond, the CITY will notify the CONTRACTOR of the defect in writing. If the CONTRACTOR refuses or neglects to repair, replace or otherwise correct the defect within ten (10) days from the date of receipt of such notice, the CITY has the option to have the work performed or furnished by others and the cost will be paid by the

CONTRACTOR or its surety.

12. TERMINATION WITHOUT CAUSE. This Agreement may be terminated by the CITY without cause upon ten (10) days written notice to the CONTRACTOR. Termination is effective upon the tenth (10<sup>th</sup>) day as counted from the date of the written notice. In the event of termination under this paragraph, the CONTRACTOR will be entitled to compensation for all services provided to the CITY up to the date of termination on a pro-rated basis and which are within the Scope of Work, are documented in the Budget, and are allowed under this Agreement. The final invoice shall be accompanied by releases of liens from the CONTRACTOR and any other lienors, as well as a no lien affidavit as provided herein.
13. DEFAULT. Either party may terminate this Agreement upon the other party's failure to comply with any term or condition of this Agreement, as long as the terminating party is not in default of any term or condition of this Agreement at the time of termination. To effect termination, the terminating party will provide the defaulting party with a written "Notice of Termination" stating its intent to terminate and describing all terms and conditions with which the defaulting party has failed to comply. If the defaulting party has not remedied its default within thirty (30) days after receiving the Notice of Termination, this Agreement will automatically terminate. The parties agree that this Agreement is an executory contract. If, after termination by the CITY, it is determined that the CONTRACTOR was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the CITY as provided in paragraph 12.
14. RELEASE OF INFORMATION. The CONTRACTOR agrees not to initiate any oral or written media interviews or issue press releases on or about the PROJECT without providing notices or copies to the CITY'S Project Manager no later than three (3) business days prior to the interview or press release.
15. ASSIGNMENT. Except as otherwise provided in this Agreement, CONTRACTOR may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the CITY. If the CONTRACTOR assigns its rights or delegates its obligations under this Agreement without the CITY'S prior written consent, the CITY is entitled to terminate this Agreement. If the CITY terminates this Agreement, the termination is effective as of the date of the assignment or delegation. Any termination is without prejudice to the CITY'S claim for damages.
16. LAW COMPLIANCE. The CONTRACTOR will abide by and assist the CITY in satisfying all applicable federal, state and local laws, rules, regulations and guidelines, related to performance under this Agreement. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, disability, marital status or national origin.
17. EMPLOYMENT OF FLORIDA RESIDENTS. In accordance with Section 255.099, F.S., CONTRACTOR must give preference to the employment of Florida residents in the performance of the work on this PROJECT if Florida residents have substantially equal qualifications to those of nonresidents. As used in this Section, the term substantially equal qualifications means the qualification of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons. CONTRACTOR must contact the Agency for Workforce Innovation

([www.floridajobs.org](http://www.floridajobs.org)) to post the CONTRACTOR'S employment needs in Florida's job bank system. This Section may not be enforced in such a manner as to conflict with or be contrary to federal law prescribing a labor preference to honorably discharged soldiers, sailors, or marines, or prohibiting as unlawful any other preference or discrimination among the citizens of the United States.

18. EMPLOYMENT ELIGIBILITY VERIFICATION. The CONTRACTOR must utilize the U.S. Department of Homeland Security's Employment Verification (E-Verify) Program to verify the employment eligibility of CONTRACTOR employees performing work directly associated with this Agreement in accordance with the terms and conditions applicable to the E-Verify Program. If the CONTRACTOR uses subcontractors to furnish services directly associated with this Agreement, performed in the United States, in an amount greater than \$3,000, the CONTRACTOR must include the requirements of this provision (appropriately modified for identification of the parties) in each subcontract. Information on registration for and use of the E-Verify Program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.
19. VENUE AND APPLICABLE LAW. All claims, counterclaims, disputes, and other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach of it will be decided in accordance with the laws of the State of Florida and by a court of competent jurisdiction within the State of Florida and venue will lie exclusively in the County of Highlands. This provision shall survive the termination or expiration of this Agreement.
20. REMEDIES. Unless specifically waived by the CITY in writing, the CONTRACTOR'S failure to timely comply with any obligation in this Agreement will be deemed a breach of this Agreement and the expenses and costs incurred by the CITY, including attorneys' fees and costs and attorneys' fees and costs on appeal, due to said breach will be borne by the CONTRACTOR. Additionally, the CITY will not be limited by the above but may avail itself of any and all remedies under Florida law for any breach of this Agreement. The CITY'S waiver of any of the CONTRACTOR'S obligations will not be construed as the CITY'S waiver of any other obligations of the CONTRACTOR. This provision shall survive the termination or expiration of this Agreement.
21. ATTORNEY FEES. Should either party employ an attorney or attorneys to enforce any of the provisions of this Agreement, or to protect its interest in any matter arising under this Agreement, or to recover damages for the breach of this Agreement, the party prevailing is entitled to receive from the other party all reasonable costs, charges and expenses, including attorneys' fees, expert witness fees, fees and costs on appeal, and the cost of paraprofessionals working under the supervision of an attorney, expended or incurred in connection therewith, whether resolved by out-of-court settlement, arbitration, pre-trial settlement, trial or appellate proceedings, to the extent permitted under Section 768.28, F.S. This provision does not constitute a waiver of the CITY'S sovereign immunity or extend the CITY'S liability beyond the limits established in Section 768.28, F.S. This provision shall survive the termination or expiration of this Agreement.
22. DRUG-FREE WORKPLACE. Prior to the commencement of any work by the CONTRACTOR pursuant to the terms of this Agreement, the CONTRACTOR must provide the CITY with written certification that it has implemented a drug-free workplace program in accordance with Subsection 440.102(15), F.S., and provide the CITY with the written certifications from any subcontractors to which the provisions of Subsection 440.102(15), F.S., also apply.



23. SUBCONTRACTORS. Nothing in this Agreement will be construed to create, or be implied to create, any relationship between the CITY and any subcontractor of the CONTRACTOR.
24. THIRD PARTY BENEFICIARIES. Nothing in this Agreement will be construed to benefit any person or entity not a party to this Agreement.
25. PUBLIC ENTITY CRIMES. Pursuant to Subsections 287.133(2) and (3), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two, for a period of 36 months following the date of being placed on the convicted vendor list. By signing this Agreement, CONTRACTOR warrants that it is not currently on a suspended vendor list and that it has not been placed on a convicted vendor list in the past 36 months. CONTRACTOR further agrees to notify the CITY if placement on either of these lists occurs.
26. DISCRIMINATION. Pursuant to Subsection 287.134(2)(a), F.S., an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity. By signing this Agreement, CONTRACTOR warrants that it is not currently on the discriminatory vendor list and that it has not been placed on the discriminatory vendor list in the past 36 months. CONTRACTOR further agrees to notify the CITY if placement on this list occurs.
27. ENTIRE AGREEMENT. This Agreement and the attached exhibits listed below constitute the entire agreement between the parties and, unless otherwise provided herein, may be amended only in writing, signed by all parties to this Agreement.
28. MUTUAL DRAFTSMANSHIP. The terms and conditions in this Agreement are the product of mutual draftsmanship by both parties, each being represented by counsel, and any ambiguities herein or in any exhibits or other documentation prepared pursuant to this Agreement shall not be construed against any of the parties because of authorship. The parties acknowledge that all the terms of this Agreement were negotiated at arms' length, and that each party, being represented by counsel, is acting to protect its, his, her, or their own interest.
29. DOCUMENTS. The following documents are attached and made a part of this Agreement. In the event of a conflict of contract terminology, priority will first be given to the language in the body of this Agreement, then to Exhibit "A," then to Exhibit "B," then to Exhibit "C," and then to Exhibit "D."

Exhibit "A" Special Project Terms and Conditions  
Exhibit "B" CONTRACTOR'S Progress Schedule  
Exhibit "C" CITY'S Request for Bids RFB # 14-100  
Exhibit "D" CONTRACTOR'S Response to RFB # 14-100  
Exhibit "E" CONTRACTOR'S FINAL PAYMENT AFFIDAVIT  
Exhibit "F" CONSENT OF SURETY COMPANY TO FINAL PAYMENT  
Exhibit "G" PUBLIC CONSTRUCTION BOND

IN WITNESS WHEREOF, the parties hereto, or their lawful representatives, have executed this Agreement on the day and year set forth next to their signatures below.

THE CITY OF AVON PARK

By: \_\_\_\_\_  
Sharon Schuler, Mayor Date

EXCAVATION POINT, INC.

By: \_\_\_\_\_  
Tal Rancourt, President Date  
Authorized Agent for Company

## EXHIBIT "A"

### SPECIAL PROJECT TERMS AND CONDITIONS

1. During construction of the PROJECT the CONTRACTOR will keep a competent superintendent on the PROJECT site who is authorized to represent the CONTRACTOR in CONTRACTOR'S absence. The CONTRACTOR will maintain an office, off site, staffed by an employee of the CONTRACTOR, who has the ability to reach the CONTRACTOR in case of emergency during regular CITY business hours (0800 - 1700, Monday through Friday). Answering services and mechanical telephone answering machines are not an acceptable substitute.
2. Prior to commencing work the CITY and CONTRACTOR will mutually agree upon the location of parking, material storage, dumpster, restroom and concrete wash out areas. Upon completion, the CONTRACTOR will restore all disturbed areas to their original condition.
3. All persons entering the PROJECT area on behalf of the CONTRACTOR will adhere to posted speed limits and traffic patterns.
4. Foul/offensive language will not be permitted; harassment of any type will not be permitted; firearms, other than power actuated devices are NOT PERMITTED at the PROJECT site. This includes bow and arrow.
5. The CONTRACTOR is responsible for all safety aspects of the job and his employees, including all lower tier subcontractors on the job site. The CONTRACTOR and all subcontractors must comply with Occupational Safety and Health Administration (OSHA) standards at all times. The CONTRACTOR must exercise safe practices at all times for the protection of all persons and property. Walkways and work areas must remain clean and unobstructed at all times.
  - 5.1 The CITY'S Project Manager may, without prior notice, inspect work sites to ensure compliance with the terms and conditions of the Agreement and with safety and health standards and requirements. In the event the CONTRACTOR fails to comply with health and safety standards or requirements, the CITY'S Project Manager may issue an order stopping all or any part of the work. Claims by the CONTRACTOR for additional compensation related to a stop work order will not be considered or accepted by the CITY. Any costs, direct or indirect, arising out of or resulting from the stop work order, will be the responsibility of the CONTRACTOR.
  - 5.2 The CONTRACTOR must: i) immediately report to the CITY'S Project Manager any work-related illness or injury which requires more than first aid treatment, or any loss or damage to CITY property, ii) develop and post in the construction area a list of emergency phone numbers, iii) prior to commencement of the work, make provisions for prompt medical attention in case of serious injury; and iv) provide a standard first aid kit in a location readily accessible by all persons.

5.3 All construction employees must be suitably dressed for protection against injury. Hard hats are required and must be used in all construction areas during the course of work activity.

6. The CONTRACTOR will at all times protect its work from damage and will protect the CITY'S property against injury or loss arising in connection with this PROJECT. The CONTRACTOR will correct any such damage, injury or loss except such as may be directly due to errors caused by the employees of the CITY. The CONTRACTOR will protect and maintain all passage ways, guard fences, lights and other facilities for safety protection required by any public authority or local conditions. The CONTRACTOR will, at all times, protect public and privately owned property in and around the PROJECT site, structures, utilities, and work of any kind against damage or interruption of service which may result from the operations of the CONTRACTOR. Damage or interruption to service resulting from the CONTRACTOR'S failure to provide such protection will be promptly repaired or restored at the sole expense of the CONTRACTOR.
7. Except in an emergency endangering life or property, no extra work or change will be made unless in compliance with a written Change Order issued by the CITY'S Project Manager, and no claim for an addition to the compensation will be valid unless so ordered. Correction of faulty or inadequate design by the CONTRACTOR is not grounds for initiation of a Change Order and the CONTRACTOR agrees to remedy such flaws at its own expense.

The CITY may order extra work or request changes by altering, adding to, or deducting from the original Scope of Work or Final Plans via written Change Order agreed to by both parties. The compensation shall be adjusted accordingly. When requested by the CITY'S Project Manager, the CONTRACTOR will submit a cost and performance proposal for changes in the work within 15 workdays after receipt of the request. The proposal will include an itemized breakdown for labor, materials, equipment and the time considerations for completing the change. All such work will be executed under the conditions of the original Agreement except that any claim for an extension of time caused thereby will be adjusted at the time of ordering such change. In giving instructions, the CITY'S Project Manager will have authority to make minor changes in the work, not involving extra time or cost, and not inconsistent with the purpose of the work.

8. If the CONTRACTOR is delayed at any time, in the progress of the work by an act of neglect of the CITY, its employees, agents or consultants, or by changes ordered by the CITY or by strikes, lock-outs, fire, unavoidable casualties or any other causes beyond the CONTRACTOR'S control, then the time of completion will be extended for such reasonable time as the CITY'S Project Manager may decide. This is the CONTRACTOR'S sole remedy for the delays set forth in this paragraph.
9. If the CONTRACTOR should be adjudged bankrupt, or if CONTRACTOR should make a general assignment for the benefit of CONTRACTOR'S creditors or declare insolvency, or if CONTRACTOR should persistently or repeatedly refuse or should fail, except in cases in which extension of time is provided, to supply enough properly skilled labor or proper material, or if CONTRACTOR should fail to make prompt payment to subcontractors or for material or labor, or disregard laws, ordinances or the instructions of the CITY'S Project Manager, or otherwise be guilty of a substantial

violation of any provision of this Agreement, then the CITY, upon certification by the CITY'S Project Manager that sufficient cause exists to justify such action, may without prejudice to any other right or remedy, and after giving the CONTRACTOR seven (7) days written notice, terminate the employment of the CONTRACTOR, take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method it may deem expedient. In such case, the CONTRACTOR will not be entitled to receive any further payment until the work is completed pursuant to the terms and conditions of the Agreement. If the unpaid balance of the contract price exceeds the expense of completing the work, including compensation for additional material and administrative services, such excess will be paid to the CONTRACTOR. If such expense exceeds such unpaid balance, the CONTRACTOR will pay the difference to the CITY. The CITY'S Project Manager will certify the damage and expenses incurred by the CITY as a result of the CONTRACTOR'S default.

10. If the work should be stopped under an order of any court, or other public authority for a period of three (3) months, through no act or fault of the CONTRACTOR or of anyone under the CONTRACTOR'S control, or if the CITY fails to pay the CONTRACTOR in accordance with the Local Government Prompt Payment Act, Part VII of Chapter 218, F.S., then the CONTRACTOR may, upon giving seven (7) days written notice to the CITY, stop work and recover from the CITY payment for all work completed to date in accordance with this Agreement. The CITY will have the option of suspending or terminating the Agreement.
11. In the case of termination of the Agreement before PROJECT completion, for any cause whatever, the CONTRACTOR, if notified to do so by the CITY, will promptly remove any part or all of his equipment and supplies from the project site. If the CONTRACTOR fails to do so, the CITY will have the right to remove such equipment and supplies at the expense of the CONTRACTOR.
12. The CITY will have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the fact that the time for completing the entire work or such portions may not have expired. However, such possession and use will not be deemed an acceptance of any work not completed in accordance with this Agreement. If such prior use increases the cost or delays the work, the CONTRACTOR may be entitled to such extra compensation, or extension of time, or both, as determined by the sole discretion of the CITY'S Project Manager.
13. The CONTRACTOR will invoice the CITY for progress made in each activity in accordance with the CONTRACTOR'S Response to RFB # 14-100.
14. The CONTRACTOR is as fully responsible to the CITY for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by the subcontractors, as CONTRACTOR is for the acts and omissions or persons directly employed by CONTRACTOR. Prior to commencing work, the CONTRACTOR will provide the CITY with a photocopy of its Contractor's license and photocopies of licenses for all of its subcontractors. Said licenses must be for the trade to be performed and provide that the entities to which they are issued are authorized to do business in Highlands County, Florida. State of Florida certification alone will not be acceptable, the CONTRACTOR and all subcontractors must register with Highlands County, Florida, and be granted an occupational license. Nothing contained in this

Agreement will be construed to create any contractual relation between any subcontractors and the CITY.

15. The CONTRACTOR and the CITY will develop a single list of items required to render the services purchased by the CITY under this Agreement, complete, satisfactory, and acceptable to the CITY within 30 calendar days after reaching substantial completion of the project according to the following process. CONTRACTOR will contact the CITY'S Project Manager to schedule a joint inspection of the project to occur after reaching substantial completion. The CONTRACTOR will provide the CITY with a proposed list of items to be completed and the completion date for each item, within 7 calendar days from the date of inspection. Within 7 calendar days of receipt of the proposed list, the CITY will either approve or revise the list to comply with the terms of this Agreement. If CONTRACTOR disputes any item, CONTRACTOR must provide supporting documentation for the disputed item within 7 days of receipt of the revised list. The CITY will review CONTRACTOR'S supporting documentation and, in its sole discretion, make a final determination regarding the list of items required to render the services complete as set forth in this paragraph.
  - 15.1 All items that require correction under this Agreement and that are identified after the preparation and delivery of the list remain the obligation of the CONTRACTOR. The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the CONTRACTOR to complete all the services purchased pursuant to this Agreement.
  - 15.2 If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to this Agreement, the CITY will continue to withhold 150 percent of the total costs to complete such items.
16. The CITY'S Project Manager will recommend final acceptance of the work performed pursuant to the PROJECT when it is completed and finished in all respects in accordance with the Agreement, including all its attachments. The CONTRACTOR will notify the CITY'S Project Manager in writing fifteen days prior to the date on which the work will be ready for final inspection. Should it develop that the work installed does not justify such inspection at that time, or that the character of materials or workmanship is such that reinspection is found necessary, the cost of such reinspection including the salary, traveling expense and other expenses of the inspector(s) will be borne by the CONTRACTOR and will be deducted from any money due the CONTRACTOR.

**EXHIBIT "E"**  
**CONTRACTOR'S FINAL PAYMENT AFFIDAVIT**

State of Florida  
County of \_\_\_\_\_

Before me, the undersigned authority, personally appeared **Tal Rancourt**, who, after being first duly sworn, deposes and says of his or her personal knowledge the following:

1. He or she is the President of Excavation Point, Inc., which does business in the State of Florida, hereinafter referred to as the "Contractor."
2. Contractor, pursuant to a contract with the City of Avon Park, Florida, hereinafter referred to as the "Owner," has furnished or caused to be furnished labor, materials, and services for the construction of certain improvements to real property as more particularly set forth in said contract.
3. This affidavit is executed by the Contractor in accordance with section 713.06 of the Florida Statutes for the purposes of obtaining final payment from the Owner in the amount of \$\_\_\_\_\_.
4. All work to be performed under the contract has been fully completed, and all lienors under the direct contract have been paid in full except the following listed lienors:

NAME OF LIENOR None AMOUNT DUE \$0.00.

Signed, sealed, and delivered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
**Tal Rancourt, President of Excavation Point, Inc.,**

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_ by **Tal Rancourt**, who is personally known to me or produced \_\_\_\_\_ as identification, and did take an oath.

By: \_\_\_\_\_  
Printed name of notary public:

Notary Public  
My Commission Expires:





**EXHIBIT "G"**  
**PUBLIC CONSTRUCTION BOND**

BY THIS BOND, We \_\_\_\_\_, as Principal and \_\_\_\_\_, a corporation, as Surety, are bound to the City of Avon Park, Florida, herein called Owner, in the sum of \$ 509,329.00, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated \_\_\_\_\_, 20\_\_\_\_, between Principal and Owner for construction of LAKE VERONA NORTHWEST BASIN, BEST MANAGEMENT PRACTICES PROJECT (14-100), the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in [Section 255.05\(1\), Florida Statutes](#), supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in [Section 255.05\(2\), Florida Statutes](#).

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

DATED ON \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Name of Principal)

By: \_\_\_\_\_ (As Attorney in Fact)

\_\_\_\_\_  
(Name of Surety)