

AGENDA ITEM SUMMARY

Meeting Date:	JUNE 5, 2019
Agenda Category:	UNFINISHED BUSINESS
Agenda Item Number:	9 B
Subject:	AUTHORIZATION TO PIGGYBACK ON AN EXISTING AGREEMENT FOR ARCHITECTURAL SERVICES (CONTRACT) APPROVED BY THE CITY OF COCOA FOR ENGINEERING AND DESIGN SERVICES FOR THE PROPOSED MULTI-PURPOSE/RECREATIONAL FACILITY (CITY MANAGER)

Attachments:	Memorandum; approved contract
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Staff Contact:	City Manager Fettrow
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Background:	The City has been discussing the possibility of constructing a multi-purpose/recreational facility for some time. Rather than conducting an RFQ process, staff is recommending piggybacking on an existing agreement for architectural services (contract) that was approved by the City of Cocoa and that would provide the City with an opportunity to work with Architects RZK, Inc., on the engineering and design phases of the project. A subsequent Request for Proposals would be issued for construction of the facility.
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Reference:	Consultants' Competitive Negotiation Act (CCNA), Sec. 287.055, Florida Statutes
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Suggested Action:	Authorize the City Manager and City Attorney to piggyback on the agreement for architectural services (contract) approved by the City of Cocoa for engineering and design services for the proposed multi-purpose/recreational facility
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CITY OF ROCKLEDGE

MEMORANDUM

CITY HALL

1600 HUNTINGTON LN.
ROCKLEDGE, FL 32955

TELEPHONE: 321-221-7540
FAX: 321-204-6356

BUILDING DIVISION

1600 HUNTINGTON LN.
ROCKLEDGE, FL 32955

TELEPHONE: 321-221-7540
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PUBLIC SAFETY DEPT.

FIRE DIVISION

1776 JACK OATES BLVD.
ROCKLEDGE, FL 32955

TELEPHONE: 321-221-7540
FAX: 321-204-6386

POLICE DIVISION

1776 JACK OATES BLVD.
ROCKLEDGE, FL 32955

TELEPHONE: 321-690-3213
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PUBLIC WORKS DEPT.

1400 N. GARDEN RD.
ROCKLEDGE, FL 32955

TELEPHONE: 321-221-7540
FAX: 321-204-6353

WASTEWATER TREATMENT & WATER RECLAMATION DEPT.

1700 JACK OATES BLVD.
ROCKLEDGE, FL 32955

TELEPHONE: 321-221-7540
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REDEVELOPMENT

1600 HUNTINGTON LN.
ROCKLEDGE, FL 32955

TELEPHONE: 321-221-7540
FAX: 321-204-6356

TO: Mayor and City Council
FROM: City Manager Fettrow *B&F*
SUBJECT: Multi-Purpose/Recreational Facility
DATE: June 5, 2019

For quite some time, the City has been discussing the possibility of constructing a multi-purpose/recreational facility at one of two locations within the City.

Rather than conducting an RFQ process, staff is recommending piggybacking on an existing agreement for architectural services (contract) approved by the City of Cocoa. If approved, this would provide the City with an opportunity to work with Architects RZK, Inc., in order to execute the requisite engineering and design stages of the project. Once completed, the City will issue a request for proposals for the actual construction of the facility.

Recently, the City has experienced great success with piggybacking on existing contracts as evidenced in both the Civic Hub and Fire Station No. 36 construction projects.

It is important to note that the City of Cocoa complied with the selection and negotiation process as set forth in the Consultants' Competitive Negotiation Act (CCNA), Sec. 287.055, Florida Statutes.

Thank you for your consideration of this recommendation. Should you have any questions or care to discuss this matter further, please contact me.

Approved By Council
01/23/2019
Item VIII.4 (19-3)

City of Cocoa
AMENDMENT TO PURCHASE AGREEMENT
1st AMENDMENT

Term Expires: 01/26/2019
Opt1 Renewal: 01/27/2019 - 01/26/2021
Opt2 Renewal: 01/27/2021 - 01/26/2023

BID NO. RFQ-16-01-COC (E)

This FIRST Amendment to the purchase agreement for **Consulting Services for Architectural Services** is made and entered into as of January 3, 2019 by and between the **City of Cocoa and Architects RZK, Inc., 600 Florida Avenue, Suite 201, Cocoa, Florida 32922.**

The original agreement entered into on January 27, 2016 is hereby amended to renew for the 1st renewal option available under the original contract documents for twenty-four (24) additional months, per the same, terms, and conditions commencing on January 27, 2019 and terminating on January 26, 2021.

The parties hereto duly execute this FIRST Amendment to become effective as of the date and year first above written.

ARCHITECTS RZK, INC.

CITY OF COCOA

By: JOHN C. ZWICK
(Name) Printed

By: Jake Williams, Jr.
(Name) Printed

PRESIDENT
(Title)

Mayor
(Title)

[Signature] 01-04-19
Signature Date

[Signature] 1/23/19
Signature Date

CC: Carie Shealy, City Clerk
Everett Wegerif, Public Works Director
Tammy Eastburn, Procurement Card Coordinator

**AGREEMENT FOR
ARCHITECTURAL SERVICES**

THIS AGREEMENT is made and entered into this **27th** day of **January** **2016**, by and between the **City of Cocoa**, a Florida Municipal Corporation ("City"), located at 65 Stone Street, Cocoa, Florida 32922, and **Architects RZK, Inc.**, a Florida corporation ("Architect"), whose address is 600 Florida Avenue, Suite 201, Cocoa, Florida 32922 ("Agreement").

WITNESSETH:

WHEREAS, City has a need to obtain architectural services from time to time on an as-needed, task oriented basis; and

WHEREAS, the City has followed the selection and negotiation process set forth in the Florida's Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes; and

WHEREAS, Architect participated in the selection and negotiation process; and

WHEREAS, Architect is willing to provide such architectural services to the City under the terms and conditions stated herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1.0 TERM AND DEFINITIONS

1.1 Unless sooner terminated by either Party pursuant to the terms and conditions herein, this Agreement shall terminate on the third (3rd) anniversary of the Effective Date. The Parties shall have the option to extend the term for two (2) additional two (2) year renewals. Any such extension shall only be by written amendment to this Agreement.

1.2 The terms and conditions of any Task Order, as described in Section 2 hereof, shall be as set forth in such Task Order. Any Task in effect at the termination of this Agreement shall remain in effect until completion of said Task Order, and all of the terms and conditions of this Agreement shall survive until completion of all Task Orders.

1.3 Definitions. The following words and phrases used in this Agreement shall have the following meaning ascribed to them unless the context clearly indicates otherwise:

a. "Agreement" or "Contract" shall be used interchangeably and shall refer to this Agreement, as amended from time to time, which shall constitute authorization for the Architect to provide the architectural services approved by Task Order by the City and is also sometimes referred to herein to include all Task Orders approved hereunder.

b. "Effective Date" shall be the date on which the last signatory hereto shall execute this Agreement, and it shall be the date on which this Agreement shall go into effect. The Agreement shall not go into effect until said date.

c. "Architect" shall mean Architects RZK, Inc., a Florida corporation, and its principals, employees, resident project representatives (and assistants).

d. "Public Record" shall have the meaning given in Chapter 119, Florida Statutes.

e. "Reimbursable Expenses" shall mean the actual expenses incurred by Architect or Architect's independent professional associates and consultants which are directly related to travel and subsistence at the rates, and under the requirements of, Section 112.061, Florida Statutes, or any other actual and direct expenses the City agrees to reimburse by Task Order.

f. "Work" or "Services" shall be used interchangeably and shall include the performance of the work agreed to by the parties in a Task Order.

g. "Task Order" shall mean a written document approved by the parties pursuant to the procedure outlined in paragraph 2.0 of this Agreement, and any amendments thereto approved pursuant to the procedures outlined in paragraph 3.0 herein, which sets forth the Work to be performed by Architect under this Agreement, and shall include, without the necessity of a cross-reference, the terms and conditions of this Agreement.

1.4 Engagement. The City hereby engages the Architect and Architect agrees to perform the Services outlined in this agreement for the stated fee arrangement. No prior or present representations shall be binding upon any of the parties hereto unless incorporated in this Agreement.

2.0 DESCRIPTION OF SERVICES

2.1 The City shall make request of Architect to perform architectural services on a "task" basis. The City will communicate with Architect, verbally or in writing, a general description of the task to be performed. The Architect will generate a detailed Scope of Work document, prepare a Schedule, add a Not-to-Exceed-Budget or Lump Sum Fee to accomplish the task with a detailed cost breakdown based on the fee schedule attached hereto as **Attachment "A"**, and send the thus developed "Task Proposal" to the City. The detailed cost breakdown of the lump sum fee shall consist of a list of major sub-tasks and a man-hour breakdown for all work to be performed. The cost breakdown shall include all sub-consultant work and the Task Proposal shall include the written price proposals from all sub-consultants. The detailed cost breakdown shall include a line item for Reimbursable Expenses and the list of the expenses proposed to be eligible for reimbursement. The City will review the Task Proposal, and if the description is mutually acceptable, the parties will enter into a written "Task Order". The Scope of Services generally to be provided by the Architect through a Task Order may include any architectural services for any City project and may contain written terms and conditions which are deemed supplemental to this Agreement.

The City will issue a notice to proceed to the Architect in the form of a letter and an executed City purchase

order. Upon receipt of the signed Task Order and the written notice to proceed from the City, the Architect shall perform the services set forth in the Task Order.

2.2 The City reserves the right, at its discretion, to perform any services related to this Agreement or to retain the services of other architectural companies to provide professional architectural services.

3.0 CHANGES IN THE SCOPE OF WORK

3.1 City may make changes in the Services at any time by giving written notice to Architect. If such changes increase (additional services) or decrease or eliminate any amount of Work, City and Architect will negotiate any change in total cost or schedule modifications. If the City and the Architect approve any change, the Task Order will be modified in writing to reflect the changes; and Architect shall be compensated for said services in accordance with the terms of Article 5.0 herein. All change orders shall be authorized in writing by City's and Architect's designated representative.

3.2 All of City's said Task Orders and amendments thereto shall be performed in strict accordance with the terms of this Agreement insofar as they are applicable.

4.0 SCHEDULE

4.1 Architect shall perform services in conformance with the mutually agreed schedule set forth in the negotiated Task Order. Architect shall complete all of said services in a timely manner and will keep City apprised of the status of work on at least a monthly basis or as otherwise reasonably requested by the City. Should Architect fall behind the agreed upon schedule, it shall employ such resources so as to comply with the agreed-upon schedule.

4.2 No extension for completion of services shall be granted to Architect without City's prior written consent, except as provided in Sections 3.1 and 19.1 herein.

4.3 Any cost caused by defective or ill-timed services shall be borne by the party responsible therefore.

5.0 METHODS OF PAYMENT FOR SERVICES AND EXPENSES OF ARCHITECT

5.1 General Services. For basic and additional Services performed by Architect's principals, employees, and resident project representatives (and assistants) pursuant to paragraphs 2.0 and 3.0, the City agrees to pay the Architect an amount equal to that agreed upon by the parties for a particular Task Order. However, payment terms must be consistent with the terms and conditions in this Agreement. To the extent that the payment terms in any Task Order conflict with the payment terms set forth in this Agreement, the conflicting provisions of this Agreement shall prevail.

5.2 Additional Services Performed by Professional Associates and Consultants. For additional Services and Reimbursable Expenses of independent professional associates and consultants employed by Architect to render additional Services pursuant to paragraphs 2.0 and 3.0, the City agrees to pay the Architect an amount equal to that billed Architect by the independent professional associates and consultants. Prior to



payment by the City, the Architect shall submit to the City a copy of any written invoice received by Architect from all independent professional associates and consultants which clearly evidences the amount billed by the independent professional associates and consultants for additional Services and any Reimbursable Expenses.

5.3 Witness Services. For witness or expert services rendered by Architect's principals, employees, resident project representatives (and assistants), and independent professional associates and consultants on behalf of the City in any litigation, arbitration, or other legal or interested administrative proceeding in which the City is a named interested party, City agrees to pay the Architect or independent professional associate or consultant, which is used as a witness or expert, an amount equal to that agreed upon by the party for a particular Task Order.

5.4 Florida Prompt Payment Act. Payment shall be due and payable as provided by the Florida Prompt Payment Act s.218.70 et. seq., Florida Statutes.

5.5 Miscellaneous. Under no circumstances shall actual or direct costs under this Agreement include costs associated with in efficiency, offsite or home office overhead, loss of productivity, consequential damages, legal or consulting costs, or costs associated with delays caused in whole or in part by the Architect.

5.6 Errors and Deficiencies. Architect shall not invoice the City or seek any compensation from the City to correct or revise any errors or deficiencies in Architect's services provided under this Agreement.

5.7 Payment Offsets. To the extent that Architect owes the City any money under this or any other Agreement with the City, the City shall have the right to withhold payment and otherwise back charge the Architect for any money owed to the City by Architect.

5.8 Payment not Waiver. The City's payment of any invoice under this Agreement shall not be construed or operate as a waiver of any rights under this Agreement or any cause of action arising out of the performance of this Agreement and Architect shall remain liable to the City in accordance with applicable law for all damages to the City caused by Architect's performance of any services provided under this Agreement.

5.9 Delay Remedy. The risk of any monetary damages caused by any delays in performing the Services under this Agreement and any Task Order are accepted and assumed entirely by the Architect, and in no event shall any claim relating thereto for an increase in compensation be made or recognized. Architect shall not make any claim nor seek any damages of any kind against the City for any delays, impacts, disruption or interruption caused by any delay. Architect's remedy for a delay shall be an equitable extension of time to perform the Services for each day of such delay that impacts the critical path of the schedule established under this Agreement or specific Task Order.

6.0 RIGHT TO INSPECTION

6.1 City or its affiliates shall at all times have the right to review or observe the Services performed by



Architect.

6.2 No inspection, review, or observation shall relieve Architect of its responsibility under this Agreement.

7.0 PROGRESS MEETING

7.1 City's designated Project Manager may hold periodic progress meetings on a monthly basis, or more frequently if required by the City, during the term of any Task Order entered into under this Agreement. Architect's Project Manager and all other appropriate personnel shall attend such meetings as designated by City's Project Manager.

8.0 SAFETY

8.1 Architect shall be solely and absolutely responsible and assume all liability for the safety and supervision of its principals, employees, resident project representatives (and assistants) while performing Services provided hereunder.

9.0 REASONABLE ACCESS

9.1 During the term of this Agreement, City shall grant Architect reasonable access to the City's premises, records, and files for purposes of fulfilling its obligations under this Agreement.

10.0 INSURANCE

10.1 Liability Amounts. During the term of this Agreement, Architect shall be responsible for providing the types of insurance and limits of liability as set forth below.

a. Professional Liability. Proof of professional liability insurance shall be provided to the City for the minimum amount of \$1,000,000 as the combined single limit per claim and \$1,000,000 in the aggregate.

b. The Architect shall maintain comprehensive general liability insurance in the minimum amount of \$1,000,000 as the combined single limit for each occurrence to protect the Architect from claims of property damages and personal injury which may arise from any Services performed under this Agreement whether such Services are performed by the Architect or by anyone directly employed by or contracting with the Architect.

c. The Architect shall maintain comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit bodily injury and minimum \$50,000 property damage as the combined single limit for each occurrence to protect the Architect from claims for damages for bodily injury, including wrongful death, as well as from claims from property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Architect or by anyone directly or indirectly employed by the Architect.

d. The Architect shall maintain, during the life of this Agreement, adequate Workers' Compensation Insurance and Employers' Liability Insurance in at least such amounts as are required by law for all of its employees performing Work for the City pursuant to this Agreement.

10.2 Special Requirements. Current, valid insurance policies meeting the requirements herein identified shall be maintained during the term of this Agreement. Renewal certificates shall be sent to the City thirty (30) days prior to any expiration date. There shall also be a thirty (30) day advance written notification to the City in the event of cancellation or modification of any stipulated insurance coverage. **The City shall be an additional named insured on stipulated insurance policies included in article 10.1.b and 10.1.c herein, as its interest may appear, from time to time.**

10.3 The insurance required by this Agreement shall include the liability and coverage provided herein, or as required by law, whichever requirements afford greater coverage. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to the City, and the Architect by certified mail, return receipt requested. All such insurance shall remain in effect until final payment. In the event that the Architect shall fail to comply with the foregoing requirement, the City is authorized, but in no event shall be obligated, to purchase such insurance, and the City may bill the Architect. The Architect shall immediately forward funds to the City in full payment for said insurance. It is expressly agreed that neither the provision of the insurance referred to in this Agreement nor the City's acceptance of the terms, conditions or amounts of any insurance policy shall be deemed a warranty or representation as to adequacy of such coverage. All insurance coverage shall be with insurer(s) rated as A+ by Best's Rating Guide (or equivalent rating and rating service as reasonably determined by the City Manager) and licensed by the State of Florida to engage in the business of writing of insurance or provided through the London Market for Professional Liability Insurance. Unless agreed to by the City to the contrary, the City shall be named on the insurance policies included in article 10.1.b and 10.1.c as "additional insured." The Architect shall cause its insurance carriers, prior to the effective date of this agreement to furnish insurance certificates specifying the types and amounts of coverage in effect pursuant hereto, the expiration dates of such policies, and a statement that no insurance under such policies will be canceled without thirty (30) days' prior written notice to the City in compliance with other provisions of this Agreement. Further copies of all relevant policies will be provided to the City within thirty (30) days of the effective date of this agreement. If the City has any objection to the coverage afforded by or other provision of the insurance required to be purchased and maintained by the Architect in accordance with this Article on the basis of its not complying with the Agreement, the City shall notify the Architect in writing thereof within thirty (30) days of the date of delivery of such certificates to the City. For all Work performed pursuant to this Agreement, the Consultant shall continuously maintain such insurance in the amounts, type, and quality as required by the Agreement.

10.4 Independent Associates and Consultants. All independent associates and consultants employed by Architect to perform any Services hereunder shall fully comply with the insurance provisions contained in this paragraph.

11.0 COMPLIANCE WITH LAWS AND REGULATIONS

11.1 Architect shall comply with all requirements of federal, state, and local laws, rules, regulations, standards, and/or ordinances applicable to the performance of Services under this Agreement.

12.0 REPRESENTATIONS

12.1 Architect represents that the Services provided hereunder shall conform to all requirements of this Agreement and any Task Order, shall be consistent with recognized and sound architectural practices and procedures; and shall conform to the customary standards of care, skill, and diligence appropriate to the nature of the Services rendered. Architect shall perform as expeditiously as is consistent with professional skill and care and the orderly progress of the Services performed hereunder. Architect's services shall be consistent with the time periods established under this Agreement or the applicable Task Order. Architect shall provide City with a written schedule for services performed under each Task Order and such schedule shall provide for ample time for the City to reviews, for the performance of consultants (if any), and for the approval of submissions by authorities having jurisdiction over the services. The Architect's designated representative shall have the authority to act on Architect's behalf with respect to the Services. In addition, Architect's representative shall render decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Services. Except with the City's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to the Services. The Architect shall review laws, codes, and regulations applicable to Architect's Services. The Architect's services and design shall comply with all applicable requirements imposed by all public authorities. The Architect represents and warrants that it is familiar with, and accepts that it will perform the Services hereunder in a manner that complies with all applicable requirements of law, codes, and regulations. Architect shall be responsible for the professional quality, technical accuracy and the coordination of all plans, studies, reports and other services furnished to the City under this Agreement. Unless this Agreement is terminated by the City, or terminated by Architect for nonpayment of any proper invoices, or the City exercises its rights to perform the Services pursuant to under Paragraph 2.2 herein, Architect shall be responsible for the satisfactory and complete execution of the Services described in this Agreement and any Task Order. The Architect represents that it will carefully examine the scope of services required by the City in and Task Order, that it will investigate the essential requirements of the services required by the Task Order, and that it will have sufficient personnel, equipment, and material at its disposal to complete the services set forth in the Task Order in a good professional and workmanlike manner in conformance with the requirements of this Agreement.

12.2 Architect represents that all principals, employees, and other personnel furnishing such Services shall be qualified and competent to perform the Services assigned to them and that such guidance given by and the recommendations and performance of such personnel shall reflect their best professional knowledge and judgment.

13.0 GUARANTEE AGAINST INFRINGEMENT

13.1 Architect guarantees that all Services performed under this Agreement shall be free from claims of



patent, copyright, and trademarks infringement. Notwithstanding any other provision of this Agreement, Architect shall indemnify, hold harmless, and defend City, its officers, directors, employees, agents assigns, and servants from and against any and all liability, including expenses, legal or otherwise, for actual or alleged infringement of any patent, copyright, or trademark resulting from the use of any goods, Services, or other item provided under this Agreement. Notwithstanding the foregoing, Architect may elect to provide non-infringing services.

14.0 DOCUMENTS

14.1 Public Records. In accordance with section 119.0701, Florida Statutes, Architect agrees that all documents, transactions, writings, papers, letters, tapes, photographs, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to this Agreement or in connection with any funds provided by the City pursuant to this Agreement may be considered public records pursuant to Chapter 119, Florida Statutes. Architect agrees to keep and maintain any and all public records that ordinarily and necessarily would be required by the City in order to perform the services required by this Agreement. Architect also agrees to provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law. Architect shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. In addition, Architect shall meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the Architect upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City. If Architect does not comply with a public records request, the City shall have the right to enforce the provisions of this Paragraph. In the event that Architect fails to comply with the provisions of this Paragraph, and the City is required to enforce the provisions of this Paragraph, or the City suffers a third party award of attorney's fees and/or damages for violating the provisions of Chapter 119, Florida Statutes due to Architect's failure to comply with the provisions of this Paragraph, the City shall be entitled to collect from Architect prevailing party attorney's fees and costs, and any damages incurred by the City, for enforcing this Paragraph against Architect. And, if applicable, the City shall also be entitled to reimbursement of any and all attorney's fees and damages which the City was required to pay a third party because of Architect's failure to comply with the provisions of this Paragraph. This Paragraph shall survive the termination of this Agreement.

a. Reuse of Documents. All documents, including but not limited to, drawings, specifications, and data, or programs stored electronically or otherwise, prepared by the Architect and its independent contractors and associates pursuant to this Agreement or related exclusively to the Services described herein shall be owned by the City and may be reused by the City for any reason or purpose at anytime. However, the City agrees that the aforesaid documents are not intended or represented to be suitable for reuse by the City or

others on any undertaking other than the Work outlined in this Agreement. Any reuse for an undertaking other than for the Work without verification or adaptation by the Architect, or its independent contractors and associates if necessary, to specific purposes intended will be at the City's sole risk and without liability or legal exposure to the Architect.

b. Ownership of Documents. The City and the Architect agree that upon payment of fees due to the Architect by the City for a particular design, report, inventory list, compilation, drawing, specification, model, recommendation, schedule or otherwise, said design, report, inventory list, compilation, drawing, specification, technical data, recommendation, model, schedule and other instrument produced by the Architect in the performance of this Agreement, or any Work hereunder, shall be the sole property of the City, and the City is vested with all rights therein. The Architect waives all rights of copyright in said design, report, inventory list, compilation, drawing, specification, technical data, recommendation, model, schedule and other instrument produced by the Architect in the performance of this Agreement, and hereby assigns and conveys the same to the City whether in the possession or control of the Architect or not.

c. Preexisting Ownership Rights to Documents. Notwithstanding any provisions to the contrary contained in this Agreement, Architect shall retain sole ownership to its preexisting information not produced and paid for by the City under this Agreement including, but not limited to computer programs, software, standard details, figures, templates and specifications.

15.0 ASSIGNMENT

15.1 Architect shall not assign or subcontract this Agreement, any Task Order hereunder, or any rights or any monies due or to become due hereunder without the prior, written consent of City.

15.2 If upon receiving written approval from City, any part of this Agreement is subcontracted by Architect, Architect shall be fully responsible to City for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.

15.3 If City determines that any subcontractor is not performing in accordance with this Agreement, City shall so notify Architect who shall take immediate steps to remedy the situation.

15.4 If any part of this Agreement is subcontracted by Architect, prior to the commencement of any Work by the subcontractor, Architect shall require the subcontractor to provide City and its affiliates with insurance coverage as set forth by the City.

16.0 INDEPENDENT CONTRACTOR

16.1 At all times during the term of this Agreement, Architect shall be considered an independent contractor and not an employee of the City.

17.0 DEFAULT BY ARCHITECT AND CITY'S REMEDIES

17.1 The City reserves the right to revoke and terminate this Agreement and rescind all rights and

privileges associated with this Agreement, without penalty, in the following circumstances, each of which shall represent a default and breach of this Agreement:

17.2 Architect defaults in the performance of any material covenant or condition of this Agreement and does not cure such other default within thirty (30) calendar days after written notice from the City specifying the default complained of, unless, however, the nature of the default is such that it cannot, in the exercise of reasonable diligence, be remedied within thirty (30) calendar days, in which case the Architect shall have such time as is reasonably necessary to remedy the default, provided the Architect promptly takes and diligently pursues such actions as are necessary therefor; or

17.3 Architect is adjudicated bankrupt or makes any assignment for the benefit of creditors or Architect becomes insolvent, or is unable or unwilling to pay its debts; or

17.4 Architect has acted grossly negligent, as defined by general and applicable law, in performing the Services hereunder; or

17.5 Architect has committed any act of fraud upon the City; or

17.6 Architect has made a material misrepresentation of fact to the City while performing its obligations under this Agreement.

17.7 Architect has assigned this Agreement or any Task Order without the City's prior written consent.

17.8 Notwithstanding the aforementioned, in the event of a default by Architect, the City shall have the right to exercise any other remedy the City may have by operation of law, without limitation, and without any further demand or notice.

18.0 TERMINATION

18.1 Notwithstanding any other provision of this Agreement, City may, upon written notice to Architect, terminate this Agreement, without penalty, if: (a) Architect is in default pursuant to paragraph 17.0 Default; (b) Architect makes a general assignment for the benefit of its creditors; (c) Architect fails to comply with any condition or provision of this Agreement; or (d) Architect is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Agreement without prejudice to any other right or remedy City may have under this Agreement.

18.2 In addition, either party may terminate for convenience with no penalty at any time upon thirty (30) days advance written notice.

18.3 In the event of termination, City shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this Agreement, for Work properly performed prior to the effective date of termination.

19.0 FORCE MAJEURE

19.1 Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; flood; windstorm; explosion; riot; war; sabotage; strikes; extraordinary breakdown of or damage to City's affiliates' generating plants, their equipment, or facilities; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the reasonable control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes. If any circumstance of Force Majeure remains in effect for sixty days, either party may terminate this Agreement.

20.0 GOVERNING LAW & VENUE

20.1 This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida. Venue for any state action or litigation shall be Brevard County, Florida. Venue for any federal action or litigation shall be Orlando, Florida.

21.0 HEADINGS

21.1 Paragraph headings are for the convenience of the parties only and are not to be construed as part of this Agreement.

22.0 SEVERABILITY

22.1 In the event any portion or part of thereof this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts of this Agreement shall otherwise be fully enforceable.

23.0 WAIVER AND ELECTION OF REMEDIES

23.1 Waiver by either party of any term, condition or provision of this Agreement shall not be considered a waiver of that term, condition, or provision in the future.

23.2 No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

24.0 THIRD PARTY RIGHTS

24.1 Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Architect.

25.0 PROHIBITION AGAINST CONTINGENT FEES

25.1 Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Architect, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

26.0 ENTIRE AGREEMENT

26.1 This Agreement, including any Task Orders and Schedules, Attachments, Appendix's and Exhibits attached hereto, constitute the entire agreement between City and Architect with respect to the Services specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded.

27.0 NO JOINT VENTURE

27.1 Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

28.0 ATTORNEY'S FEES

28.1 Should either party bring an action to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party the costs and expenses of such action including, but not limited to, reasonable attorneys' fees, whether at settlement, trial or on appeal.

29.0 COUNTERPARTS

29.1 This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be considered an original agreement; but such counterparts shall together constitute but one and the same instrument.

30.0 DRAFTING

30.1 City and Architect each represent that they have both shared equally in drafting this Agreement and no party shall be favored or disfavored regarding the interpretation of this Agreement in the event of a dispute between the parties.

31.0 NOTICE

31.1 Any notices required to be given by the terms of this Agreement shall be delivered by hand or mailed, postage prepaid to:

For Architect:

Architects RZK, Inc.

Attention: JOHN C. ZWICK

600 Florida Avenue, Suite 201

Cocoa, Florida 32922

() - Phone 321-631-8039

For City:

City of Cocoa

Attention: City Manager

65 Stone Street

Cocoa, FL 32922

(321) 433-8688 Phone

(321) 433-8698 Fax

31.2 Either party may change the notice address by providing the other party written notice of the change.

32.0 SOVEREIGN IMMUNITY

32.1 Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of the City's right to sovereign immunity under section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law. As such, the City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, the City shall not be liable for any claim or judgment, or portion thereof, to any one person for more than two hundred thousand dollars (\$200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of three hundred thousand dollars (\$300,000.00). This paragraph shall survive termination of this Agreement.

33.0 CORPORATE REPRESENTATIONS BY ARCHITECT

33.1 Architect hereby represents and warrants to the City the following:

a. Architect is duly registered and licensed to do business in the State of Florida and is in good standing under the laws of Florida, and is duly qualified and authorized to carry on the functions and operations set forth in this Agreement.

b. The undersigned representative of Architect has the power, authority, and legal right to execute and deliver this Agreement on behalf of Architect.

34.0 INDEMNIFICATION

34.1 Architect shall indemnify and hold harmless the City, and its officers (including its City Attorneys) and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Architect and other persons employed by the Architect in the performance of the Agreement and any Task Order.

34.2 Architect shall also indemnify and hold harmless the City, and its officers (including its City Attorneys) and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by Architect's breach and caused by other persons employed by the Architect in the performance of the Agreement and any Task Order.

The indemnity provisions set forth in Paragraphs 34.1 and 34.2 shall be considered separate and independent indemnity provisions.

35.0 ARCHITECT'S PERSONNEL AT CONSTRUCTION SITE

35.1 The presence or duties of Architect's personnel at a construction site, whether as onsite representatives or otherwise, do not make Architect or Architect's personnel in any way responsible for those duties that belong to City and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the applicable construction contract documents and any health or safety precautions required by such construction work. Architect and Architect's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except Architect's own personnel.

35.2 The presence of Architect's personnel at a construction site is for the purpose of providing to City a greater degree of confidence that the completed work will conform generally to the applicable contract documents and that the integrity of the design concept as reflected in the contract documents has been implemented and preserved by the construction contractor(s). Architect neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the contract documents. For this Agreement only, construction sites include places of manufacture for materials incorporated into the construction work, and construction contractors include manufacturers of materials incorporated into the construction work.

36.0 RECORD DRAWINGS

36.1 Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the project was finally constructed. Architect is not responsible for any errors or omissions



in the information from others that is incorporated into the record drawings.

37.0 ADDITIONAL ASSURANCES

37.1 The Architect for itself and its Sub-consultants, if any, certifies that:

- a. No principal (which includes officers, directors, or executive) or individual holding a professional license and performing work under this Agreement is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any architecture, landscape architecture, engineering or surveying activity by any Federal, State, or local governmental commission, department, corporation, subdivision, or agency;
- b. No principal (which includes officers, directors, or executive) or individual holding a professional license and performing work under this Agreement, employee, or agent has employed or otherwise provided compensation to, any employee or officer of the City; and;
- c. No principal (which includes officers, directors, or executive) or individual holding a professional license and performing work under this Agreement, employee, or agent has willfully offered an employee or officer of the City any pecuniary or other benefit with the intent to influence the employee or officer's official action or judgment.
- d. The undersigned is authorized to execute this Agreement on behalf of the Architect and said signature shall bind the Architect to this Agreement. No further action is required by the Architect to enter into this Agreement other than Architect's undersigned representative execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

CITY:

ARCHITECT:

CITY OF COCOA

ARCHITECTS RZK, INC.

By:

John A. Titkanich, Jr., AICP
City Manager

By:

Print Name/Title: JOHN C. ZWICK
PRESIDENT

By:

Carrie Shealy, City Clerk



"Attachment A"



HOURLY RATES FOR PROFESSIONAL SERVICES
January 2016

These rates will remain during the term of the contract extension.

Architects RZK, Inc.

Principal Architect or Engineer	\$ 149.50/mh
Project Manager	\$ 124.00/mh
Roofing Consultant	\$ 125.20/mh
CAD Technician-Designer / 3D Illustrator	\$ 76.90/mh
CAD Draftsman	\$ 70.10/mh
Documentation / Clerical	\$ 51.20/mh

We desire to include above the continuing contract hourly fees for the initial term with the City of Cocoa for our new continuing services contract.

A large, stylized handwritten signature in black ink, appearing to read "John C. Zwick".

John C. Zwick, President

dated 12.2015