

AGREEMENT
between
THE CITY OF COCONUT CREEK
and
VISUALSCAPE, INC.
for
STATE ROAD 7 MEDIAN ENHANCEMENT PROJECT
BID NO. 01-08-20-11

THIS AGREEMENT is made and entered into this _____ day of _____, 2020, by and between the City of Coconut Creek, a municipal corporation, with principal offices located at 4800 West Copans Road, Coconut Creek, FL 33063 (the "City") and VisualScape, Inc., a Florida corporation with principal offices located at 17801 NW 137 Avenue, Miami, FL 33018 (the "Contractor") to complete the State Road 7 Median Enhancement Project as specified in Bid No. 01-08-20-11.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Contractor agree as follows:

1) The Contract Documents

The contract documents consist of this Agreement, conditions of the contract (General, Supplementary and other Conditions), drawings, specifications of Bid No. 01-08-20-11, all addenda issued prior to, and all modifications issued after execution of this Agreement. These contract documents form the Agreement, and all are as fully a part of the Agreement as if attached to this Agreement or repeated therein.

2) The Work

The Contractor shall perform all work for the City required by the contract documents and Bid No. 01-08-20-11, as set forth below:

- a) Contractor shall furnish all labor, materials, and equipment necessary as indicated in the specifications, as outlined in the Contract Documents.
- b) Contractor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Contractor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. Contractor shall at all times have a competent field supervisor on the job site to enforce these policies and procedures at the Contractor's expense.
- c) Contractor shall provide the City with seventy-two (72) hours written notice prior to the beginning of work under this Agreement and prior to any schedule change with the exception of changes caused by inclement weather.

- d) Contractor shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

3) Insurance

- a) Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as required by the City's Risk Manager before beginning work under this Agreement including, but not limited to, Workers' Compensation, Commercial General Liability, and all other insurance as required by the City, including Professional Liability when appropriate. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk Manager certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contractor shall be responsible for all actions of his subcontractors and shall ensure that all subcontractors comply with the above guidelines, retaining necessary insurance in force, where required, throughout the term of this agreement.
- b) Contractor shall indemnify and hold the City harmless for any damages resulting from failure of the Contractor to take out and maintain such insurance. Contractor's Liability Insurance policies shall be endorsed to add the City as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies.

4) Time of Commencement

The work to be performed under this Agreement shall be commenced after City execution of the Agreement and not later than ten calendar (10) days after the date that Contractor receives the City's Notice to Proceed, subject to any permitted extensions of time under the Contract Documents. Project substantial completion shall be within one hundred fifty (150) days from issuance of City's Notice to Proceed, subject to any permitted extensions of time under the Contract Documents. Final completion shall be thirty (30) calendar days from date of substantial completion, totaling one hundred eighty (180) calendar days. For the purposes of this Agreement, completion shall mean the issuance of final payment.

During the pre-construction portion of the work, the parties agree to work diligently and in good faith in performing their obligations so that all required permits for the construction portion of the work may be obtained by the City in accordance with the Schedule included in the Contract Documents. In the event that any delays in the pre-construction or construction portion of the work occur, despite the diligent efforts of the parties and such delays are the result of force majeure or are otherwise outside of the control of either party, then the parties shall agree on an equitable extension of the time for substantial completion and any resulting increase in general condition costs.

5) Contract Sum

The City shall pay the Contractor in current funds for the performance of the work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of FOUR HUNDRED EIGHTY SIX THOUSAND SEVEN HUNDRED TWO Dollars and THIRTY FIVE cents (\$486,702.35).

6) Payments

Payments will be made in accordance with contract documents and Bid No. 01-08-20-11. Payment will be made monthly for work that has been completed, inspected and properly invoiced. A retainage of ten percent (10%) will be deducted from the monthly payment. The City may, at its sole discretion, reduce the retainage to five percent (5%) after successful completion of fifty percent (50%) of work. Retainage monies will be released upon satisfactory completion and final inspection of the project.

7) City's Contingency Allowance

City reserves the right to utilize a ten (10) percent contingency allowance for unforeseen conditions, City-directed modifications and approved increases to Contractor's scope of work. The percentage shall be based upon the aforementioned Contract Sum. Payment under this allowance shall only be made for contingency change orders approved in writing by the City. Payment under this allowance shall be limited to the actual cost plus 5% profit for sub-contractor and 5% profit for General Contractor.

8) Remedies

Damages

The City reserves the right to recover any ascertainable actual damages incurred as a result of the failure of the Contractor to perform in accordance with the requirements of this Agreement, or for losses sustained by the City resultant from the Contractor's failure to perform in accordance with the requirements of this Agreement.

Correction of Work

If, in the judgment of the City, work provided by the Contractor does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, the City reserves the right to require that the Contractor correct all deficiencies in the work to bring the work into conformance without additional cost to the City, and / or replace any personnel who fail to perform in accordance with the requirements of this Agreement. The City shall be the sole judge of non-conformance and the quality of workmanship.

9) Waiver of Liens

Prior to final payment of the Contract Sum, a final waiver of lien shall be submitted by all suppliers, subcontractors, and/or Contractors who worked on the project that is the subject of this Agreement.

10) Warranties

Warranty of Title

Contractor warrants to the City that all goods and materials furnished under the contract will be new unless otherwise specified and that Contractor possesses good, clear, and marketable title to said goods and there are no pending liens, claims, or encumbrances whatsoever against said goods. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective.

Warranty of Specifications

Contractor warrants that all goods, materials and workmanship furnished, whether furnished by the Contractor or its subcontractors and suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted.

Warranty of Merchantability

Contractor warrants all material and workmanship for a minimum of one (1) year from date of project completion and acceptance by the City. If within one (1) year after acceptance by the City, or within such larger period of time as may be prescribed by law any of the work is found to be defective or not in accordance with the contract documents, the Contractor shall after receipt of a written notice from the City to do so, promptly correct the work unless the City has previously given the Contractor a written acceptance of such condition.

11) Indemnification

The Contractor shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the Contractor or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination or expiration of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination or expiration hereof.

Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or Florida Statutes 768.28, as amended from time to time.

12) Anti-Discrimination

That Contractor shall for itself, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees, as a part of the consideration hereof, hereby covenant and agree that:

- a) No person on the ground of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity, expression or veteran or service member status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of or performance of services described herein; and
- b) Contractor, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity or expression or veteran or service member status.

13) Independent Contractor

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Contractor is an independent contractor under this Agreement and not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments,

Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Contractor's funds provided for herein. The Contractor agrees that it is a separate and independent enterprise from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the City and the City will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

14) Assignment and Subcontracting

Contractor shall not transfer or assign the performance required by this Agreement without the prior consent of the City. This Agreement, or any portion thereof, shall not be subcontracted without the prior written consent of the City nor shall the Contractor assign any monies due or to become due to him or her, without the previous written consent of the Contract Administrator.

15) Notice

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the following addresses.

CITY

City Manager
City of Coconut Creek
4800 West Copans Road
Coconut Creek, FL 33063
With a copy to the City Attorney at the same address.

CONTRACTOR

Ivan Vila, President
VisualScape, Inc.
17801 NW 137 Avenue
Miami, FL 33018
Office: (305) 362-2404
Fax: (305) 362-2403
Email: ivila@visualscapeinc.com
Website: www.visualscapeinc.com

16) Agreement Subject to Funding

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Coconut Creek in the annual budget for each fiscal year of this Agreement, and is subject to termination without any penalty due to lack of funding.

17) Waiver of Jury Trial

Contractor and the City each hereby knowingly, voluntarily and intentionally waive any right either may have to a trial by jury with respect to any litigation based on this Agreement, or arising out of, under or in connection with this Agreement and/or the products or services provided hereunder, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of either party.

18) Venue

The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place exclusively in the Seventeenth Judicial Circuit in and for Broward County, Florida and that all litigation between them in the federal courts shall take place exclusively in the Southern District in and for the State of Florida.

19) Signatory Authority

The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

20) Severability; Waiver of Provisions

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

21) Merger; Amendment

This Agreement constitutes the entire Agreement between the Contractor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Contractor and the City.

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF COCONUT CREEK, through its City Manager or designee and VisualScape, Inc., signing by and through its President, Ivan Vila, duly authorized to execute same.

CITY OF COCONUT CREEK

ATTEST:

Karen M. Brooks, City Manager Date

Leslie Wallace May Date
City Clerk

Approved as to form and legal sufficiency:

Terrill C. Pyburn, City Attorney Date

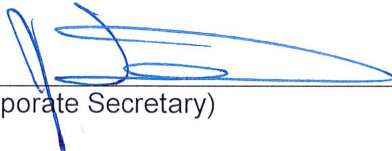
[Contractor's Signature to Follow]

VISUALSCAPE, INC.

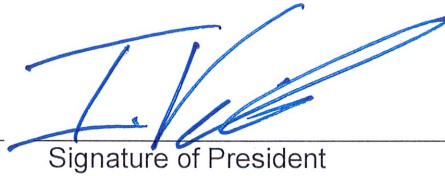
ATTEST:

VisualScape Inc.

Company Name



(Corporate Secretary)



Signature of President

01/15/2020
Date

Jose M. Quintero
Type/Print Name of Corporate Secy.

Ivan C. Vila
Type/Print Name of President

(CORPORATE SEAL)

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CORPORATE ACKNOWLEDGEMENT

STATE OF FLORIDA:

:SS

COUNTY OF Miami-Dade

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Ivan C. Vila, of VisualScape Inc. a Florida Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this 15 day of January, 2020.

Mercy T Navarro
Signature of Notary Public
State of Florida at Large



Print, Type or Stamp
Name of Notary Public

Personally known to me or
 Produced Identification

Type of I.D. Produced

DID take an oath, or
 DID NOT take an oath.